

**POST 2013 LEARNING AND DIALOGUE  
FORUM ON ELECTIONS AND  
ELECTORAL PROCESSES IN KENYA**

25<sup>th</sup> – 28<sup>th</sup> NOVEMBER, 2014  
GREAT RIFT VALLEY LODGE, NAIVASHA

**LEARNING PLATFORM REPORT**

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### **OUR VISION**

A free, just and democratic society

### **OUR MISSION**

To nurture democratic culture and principles that strengthens good governance in Kenya and Africa

### **OUR CORE VALUES**

Integrity  
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Innovation  
Diligence  
Results focused  
Teamwork  
Respect  
Diversity

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It couldn't have commenced without the ideas sparked by the Technical Working Group (TWG) on elections; a consortium made up of twelve CSOs and two development partners including: IED, KHRC, ICJ-K, NCCCK, YAA, EISA, ELOG, CRECO, UDPK, CMD, Kituo Cha Sheria, IFES, NDI and Uraia Trust. We would like to thank them for providing technical support and content during the learning and dialogue platform. We applaud the technical experts on elections who led informative and engagement thematic presentations during the forum.

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We applaud the efforts of the learning and dialogue platform participants who offered their experience and solution orientated strategies to improve electoral processes in Kenya. Without your effective participation, this process would not have been as fruitful as it was. We look forward to sharing this report with you and using it as an advocacy tool in this election cycle.

## ABBREVIATIONS AND ACRONYMS

<b>BVR</b>	Biometric Voter Registration
<b>CMD</b>	Centre for Multi -Party Democracy
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRECO</b>	Constitution and Reform Education Consortium
<b>CSO</b>	Civil Society Organization
<b>EISA</b>	Electoral Institute for Sustainable Democracy in Africa
<b>ELOG</b>	Elections Observation Group
<b>EMB</b>	Electoral Management Body
<b>EVID</b>	Electronic Voter Identification Device
<b>ICT</b>	Information Communication and Technology
<b>ICJ-Kenya</b>	Kenya Chapter of the International Commission of Jurists
<b>IEBC</b>	Independent Electoral and Boundaries Commission
<b>IEC</b>	Information Education and Communication materials
<b>IED</b>	Institute for Education in Democracy
<b>IFES</b>	International Foundation for Electoral Systems
<b>IRI</b>	International Republican Institute
<b>JSC</b>	Judicial Service Commission
<b>KEPSHA</b>	Kenyan Primary School Head Teachers Association
<b>KSSHA</b>	Kenya Secondary Schools Heads Association
<b>KLRC</b>	Kenya Law Reform Commission
<b>KHRC</b>	Kenya Human Rights Commission
<b>KICD</b>	Kenya Institute of Curriculum Development
<b>MoE</b>	Ministry of Education
<b>NCCK</b>	National Council of Churches in Kenya
<b>NCPWD</b>	National Council for Persons with Disabilities
<b>NDI</b>	National Democratic Institute
<b>NRB</b>	National Registration Bureau
<b>ORPP</b>	Office of the Registrar of Political Parties
<b>PPA</b>	Political Parties Act
<b>PPDT</b>	Political Parties Disputes Tribunal
<b>PPLC</b>	Political Parties Liaison Committee
<b>PWDs</b>	People living with disabilities
<b>TWG</b>	Technical Working Group on Elections
<b>UDPK</b>	United Disabled Persons of Kenya
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>YAA</b>	Youth Agenda

## EXECUTIVE SUMMARY

This report documents the proceedings of the **“Post 2013 Learning and Dialogue Platform on Elections and Electoral Processes”** held between 25<sup>th</sup> - 28<sup>th</sup> November 2014 at the Great Rift Valley Lodge, Naivasha. The forum was organized under the aegis of the Institute for Education in Democracy (IED), Kenya Human Rights Commission (KHRC) and the Kenya Chapter of the International Commission of Jurists (ICJ-K) being part of the Technical Working Group on elections (TWG), which is a loose network of civil society organizations working on democracy and electoral issues.

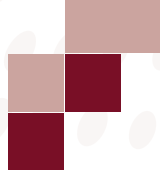
The TWG works towards the provision of technical support in election administration and management and other election related issues in the sector; thematic consolidation of election monitoring and observation findings and recommendations post the 2013 general elections; championing timely administrative and legal electoral reforms geared towards enhancing the democratic space in Kenya; harmonization of skills and resources in current institutional interventions; and addressing the public on pertinent electoral issues as and when required through institutional leadership. IED is the convenor of the TWG which currently has a membership of eleven organizations and two development partners including: IED, KHRC, ICJ-K, NCCK, YAA, EISA, ELOG, CRECO, UDPK, CMD, Kituo Cha Sheria, NDI and Uraia Trust.

Under the leadership of IED and KHRC, technical staff from the TWG organizations convened to consolidate findings and recommendations from observation of by-elections post the 2013 general elections. These recommendations informed the thematic approach of the learning and dialogue platform which focused on the following areas; Election Administration and Management; Elections and Human Rights; Elections and Legal Framework; Elections and Civic Engagement; Elections and Marginalized Groups; Elections and Political Parties; Elections and the use of Technology; and Elections and Media.

The forum brought together key electoral stakeholders including the IEBC, ORPP, the Judiciary, political parties, NRB and CSOs to take stock of the 2013 general elections and commence strategic discussions towards more credible and transparent 2017 general elections.

In 2007 Kenya was on the brink of a civil war due to the disputed presidential elections. Several factors were identified as the cause of this and including a discredited electoral system and institutions in which the public had very little faith in its credibility. Constitutional reforms heralded the institutional reforms which included in some instances a total overhaul of the existing institutions. While the 2010 referendum was organized and held by a temporary body successfully, the Interim Independent Electoral Commission (IIEC), the 2013 general elections provided a litmus test to whether the institutional reforms had taken root and borne the fruit for which they were intended.

The 2013 general elections were the first elections to be held under a new constitutional dispensation in Kenya. These elections were historic as they provided a departure in a number of ways from



elections held previously in Kenya. These changes were majorly occasioned by massive reforms in the country's legal, institutional and administrative frameworks anchored in the Constitution of Kenya 2010 (CoK) and which provided for a fundamental shift in how elections are conducted.

The CoK established the concept of devolution creating 47 County Governments and scrapped local authorities. The electorate was now required to elect 47 Governors and members of the County Assembly, which are mini governments with devolved functions. The Constitution also introduced a bicameral assembly and the electorate was now required to elect a Senator and a Member of Parliament who had separate distinct roles.

There were also major constitutional gains in regards to recognition and provision for the participation of women, youth, and persons living with disabilities and other marginalized groups who were hitherto excluded from political governance. The CoK provides enhanced space for each of the aforementioned groups to participate in elections and to have representation in the legislative assemblies through allocation of special seats to either be filled through elections or nomination processes. It specifically set a threshold of 'not more than two thirds of any gender' for any elective or appointive position.

During the 2013 general elections, the IEBC adopted the utilization of technology in voter registration and identification, and transmission of results to improve efficiency and enhance credibility of the process and the results. However, the application of technology was fraught with challenges due to the failure of the Electronic Voter Identification Devices (EVIDs) and the Electronic Results Transmission System during the Election Day. Conversely, the observation of the by-elections post the 2013 general elections have reported efficiency and effectiveness of the voter identification devices and the results transmission system.

Other challenges that continue to bedevil the elections and electoral processes post the 2013 general elections include:

- *Weak legal framework governing elections and electoral processes occasioned by a series of late amendments to electoral legislation effected by Parliament before the 2013 general elections.*
- *Unclear timelines with regards to the next general elections.*
- *Complexity of the electoral dispute resolution processes and multiplicity of institutions mandated with dispute resolution.*
- *Lack of clarity on the formula intended to realize the two-thirds gender quota particularly in both the Senate and the National Assembly.*
- *Weak intra-political party democracy within political parties and lack of compliance with the Constitution and the Political Parties Act by Political Parties.*
- *Lack of continuous civic and voter education.*

- 
- *Weak institutional framework of the ORPP which requires strengthening to enable effective regulation and management of political parties in the country.*
  - *The existence of multiple voters' registers posed a threat to the credibility of the elections and ensuing results.*
  - *Lack of dialogue platforms for stakeholders engaged in elections to discuss, deliberate and consultatively agree on strategies to improve the process going forward.*
  - *Little confidence in IEBC due to allegations of corruption in tendering and manipulation of systems arising from a section of electoral stakeholders.*

The foregoing challenges and the need for solutions-oriented engagement amongst stakeholders engaged in elections necessitated the need for learning and dialogue forum, which intended to formulate a road map towards transparent and credible 2017 general elections. It is on this premise that IED, KHRC and ICJ-K as members of the TWG on elections organized this platform of state and non-state actors to have strategic discourse and make recommendations for improving elections and electoral processes in the future.

## MATRIX OF ISSUES AND RECOMMENDATIONS FROM THE LEARNING PLATFORM

This matrix comprises of issues and recommendations from the Naivasha Learning and Dialogue Platform. The forum agreed that a roadmap for implementing the recommendations be developed which would categorise the specific interventions as short term, medium term and long term goals.

PURPOSE	RECOMMENDATIONS	TARGETED INSTITUTION
<b>Legal and Policy Framework</b>		
Streamlining resolution of electoral disputes	<p>Amend Article 88 (4) of the CoK 2010 by deleting clause (e) to dissociate IEBC from hearing and determining electoral disputes.</p> <p>The provision reads as follows; 88 (4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for— (e) <i>“the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results”</i>.</p> <p>Section 4 (e) of the IEBC Act (No. 9 of 2011) which duplicates the above provision should be deleted.</p>	<ul style="list-style-type: none"> <li>• Parliament</li> <li>• IEBC</li> <li>• Judiciary</li> </ul>
Representation of the diaspora	Amend the CoK 2010/Elections Act, 2011 to provide for representation of the Diaspora.	<ul style="list-style-type: none"> <li>• Parliament</li> </ul>
Simplifying the electoral process and ensuring inclusivity to cater for all eligible voters	<ol style="list-style-type: none"> <li>1) Amend the CoK 2010/Elections Act, 2011 to provide mechanisms for; <ul style="list-style-type: none"> <li>• Advance voting</li> <li>• Staggering of the elections</li> </ul> </li> <li>2) Provision for mechanisms to ensure registration and voting of prisoners and staff on duty on Election Day.</li> </ol>	<ul style="list-style-type: none"> <li>• AG</li> <li>• Parliament</li> <li>• IEBC</li> </ul>
Protecting the electorates right of representation	<ul style="list-style-type: none"> <li>• Develop regulations under the Elections Act, 2011 and Political Parties Act, 2011 that govern withdrawal of candidature from contesting once cleared by IEBC.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> </ul>
Securing the integrity of the party nomination processes	<ul style="list-style-type: none"> <li>• Amend the Elections Act, 2011 to provide for strict provisions relating to the nomination process and to empower IEBC, ORPP, PPLC and PPDT to take actions against political parties that violate the nominations process.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• Political Parties</li> </ul>
Protecting the integrity of legal framework for elections	<ul style="list-style-type: none"> <li>• Amend the CoK 2010 to restrict amendments to electoral laws six months to elections.</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament</li> <li>• AG</li> <li>• All Stakeholders</li> </ul>

## Legal and Policy Framework

Streamlining the appeal process	<ul style="list-style-type: none"> <li>Formulate rules to govern election appeals from the Court of Appeal to the Supreme Court particularly defining specific matters and the timeframes. The Supreme Court must be excluded as an appellate court with respect to election petitions as is envisaged by the CoK 2010.</li> </ul>	<ul style="list-style-type: none"> <li>Judiciary</li> </ul>
Promoting justice and enhancing legitimacy in Presidential Petitions	<ul style="list-style-type: none"> <li>Amend the CoK 2010 and the Elections Act, 2011 to provide for a mechanism and adequate time for filing and determination of a petition arising from the first round of Presidential elections.</li> <li>Amend the CoK 2010 to increase the timeframe for determination of the presidential election petitions from a maximum of 14 days to at least a maximum of 28 days.</li> </ul>	<ul style="list-style-type: none"> <li>AG</li> <li>IEBC</li> </ul>
Enhancing gender parity, representation of youth, PWDs and marginalised groups	<ul style="list-style-type: none"> <li>Develop a policy on Special Groups participation in Elections.</li> <li>Enact the legislation required by Article 100 by 27th August 2015</li> <li>Develop regulations to sanction political parties that do not comply with the requirement for youth, women and PWDs nomination.</li> </ul>	<ul style="list-style-type: none"> <li>AG</li> <li>IEBC</li> <li>Ministry of Devolution and Planning</li> </ul>
Enhancing intra-party democracy	<ul style="list-style-type: none"> <li>Amend the Elections Act and the Political Parties Act to enforce internal party democracy.</li> <li>Draft standardized nomination rules to be adopted by all the political parties.</li> <li>All political parties to have specific ideologies through the development of strategic plans and policy documents</li> </ul>	<ul style="list-style-type: none"> <li>ORPP</li> <li>KNHRC</li> <li>IEBC</li> <li>CSOs</li> <li>Political Parties</li> <li>PPDT</li> <li>PPLC</li> </ul>
Regulating political party financing	<ul style="list-style-type: none"> <li>Implement the Campaign Finance Act, 2013.</li> <li>Amend Section 25 (2) (a) of the Political Parties Act to provide for an equitable mechanism for funding all political parties.</li> <li>Formulate and enforce regulations requiring political parties to disclose any external financiers.</li> </ul>	<ul style="list-style-type: none"> <li>ORPP</li> <li>Parliament</li> <li>Political Parties</li> </ul>
Promoting efficient intra-party dispute resolution mechanisms	<ul style="list-style-type: none"> <li>Develop model rules for internal dispute resolution mechanisms.</li> </ul>	<ul style="list-style-type: none"> <li>ORPP</li> <li>Political parties</li> <li>PPDT</li> </ul>
Provide certainty about the date for the next general election	<ul style="list-style-type: none"> <li>The IEBC should make public the date for the next general election. Proposed amendments to move the election date from the 2nd Tuesday of August of every fifth year as set by the Constitution must take into consideration the implication of the term of office of the IEBC Commissioners and the Judges of the Supreme Court.</li> <li>The tenure of office for the IEBC Commissioners and the Judges of the Supreme Court should be staggered in order to avoid the terms for all Judges/Commissioners expiring simultaneously.</li> </ul>	<ul style="list-style-type: none"> <li>IEBC</li> <li>Parliament</li> <li>JSC</li> </ul>

## Improving the Electoral Process

Promoting electoral credibility and integrity of electoral processes	<ul style="list-style-type: none"> <li>• Ensure the voter register is consolidated and that all registrations appear in one single final register. The register should also be availed to any interested party for inspection upon request to the Commission.</li> <li>• Rebuild public confidence in the IEBC. This can only be achieved by the Commission through ensuring that they exercise independence, impartiality, transparency and professionalism.</li> <li>• Strengthen the PPLC in order for political parties to have confidence in it.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> </ul>
Electoral monitoring and enhancing voter turnout.	<ul style="list-style-type: none"> <li>• Develop a tool for capturing disaggregated data of voter turnout in terms of gender, age and disability status.</li> <li>• Formulate appropriate strategies to enhance voter turnout.</li> <li>• Complete all post-election evaluation within 18 months as per international best practice.</li> <li>• Consult with stakeholders on the challenges noted and how to address them ahead of the next election.</li> <li>• Independent Commissions and Offices to play a greater role in conducting integrity tests on the entire electoral process including voter education &amp; voter registration.</li> <li>• Party agents be trained in advance and only those that undergo training will be allowed into the polling/tallying centres.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• All Stakeholders</li> </ul>
Facilitating diaspora voting and representation	<ul style="list-style-type: none"> <li>• Establish the statistics of Kenyans living in the Diaspora and their concentration.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• Ministry of Foreign Affairs,</li> <li>• KNBS</li> <li>• Diaspora organizations</li> </ul>
Simplify the balloting process	<ul style="list-style-type: none"> <li>• Issue a voter with only one ballot paper at a time to eliminate confusion</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> </ul>
Promoting voter registration	<ul style="list-style-type: none"> <li>• Integrate the civil and voter registration processes.</li> <li>• Register prisoners to participate in presidential elections and referenda.</li> <li>• Develop and institutionalize strategies for continuous voter registration.</li> <li>• Combine both active and passive approaches to the registering of voters.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• NRB</li> </ul>

## Voter Education/Civic Education

<p>Voter/civic education</p>	<ul style="list-style-type: none"> <li>• Set up an independent body which enjoys goodwill from all the parties to conduct civic/voter education.</li> <li>• Implement continuous voter education.</li> <li>• Increase funding made available for voter education. This funding must come from the taxpayer and must be sustainable.</li> <li>• Develop and institutionalize standardized and targeted voter education strategies.</li> <li>• Develop a voter education curriculum for schools.</li> <li>• Allocate sufficient resources for effective voter/civic education.</li> <li>• Conduct voter/civic education at the ward level.</li> <li>• Voter education programmes must start early and must be continuous. The IEBC and other stakeholders must avoid waiting to start very late towards the Election Day.</li> <li>• Develop a strategy for wide stakeholder participation in the voter / civic education process.</li> <li>• The IEBC to engage with the Ministry of Education (MoE) and the teachers heads associations at the primary and secondary level so that they may be able to begin civic and voter education in schools.</li> <li>• Donor institutions to partner with the IEBC and provide funding for civic and voter education.</li> <li>• Political parties and the IEBC must forge partnerships to ensure that they jointly conduct civic/voter education.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• Treasury</li> <li>• Parliament</li> <li>• KICD</li> <li>• MoE</li> <li>• KEPSHA</li> <li>• KSSHA</li> </ul>
<p>Content of voter education</p>	<ul style="list-style-type: none"> <li>• Voter education must prepare of both voters and candidates to accept the outcome of the elections.</li> <li>• Voter education must be practical and IEBC to conduct simulation exercises of the actual balloting process.</li> <li>• Design targeted voter education programmes which are specific to the intended audiences.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• KICD</li> </ul>
<p>Role of political parties in voter/ civic education</p>	<ul style="list-style-type: none"> <li>• Political parties must play a part in conducting voter education since they are an integral part of the electoral process.</li> <li>• Participate jointly with the IEBC in conducting voter education. IEBC to facilitate the political parties by supplying them with standardized IEC materials and curriculum.</li> <li>• Use part of the Political Parties Fund money to conduct civic education.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• Political Parties</li> </ul>
<p>Awareness creation on the new constitutional and administrative dispensation</p>	<ul style="list-style-type: none"> <li>• Conduct civic education alongside voter education to sensitize the public on the roles of elected leaders at the National and County levels of government.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> </ul>

## Enhancing Participation of Women, Youth, Persons with Disabilities and Marginalised Communities

Realisation of the not more than two-thirds gender rule

- Develop short, medium and long term strategies for the realization of the not more than two-thirds gender principle in parliament and within political parties.

The following suggestions were made:

- (a) Amend the Constitution as was proposed in the Mutula Bill (which had been proposed to implement the two-thirds gender rule) by amending Articles 91, 96 and 97 of the Constitution. This should be coupled with a ceiling on the number of MPs.
  - (b) Abolish one constituency per county to establish two positions for women per county. This would increase the number of women to 94 in the very least.
  - (c) Revoke all Constituency boundaries to establish one super Constituency called Kenya. Electorate to vote for the most popular party and the parties be allocated seats depending on the percentage of votes that they garner. Parties to submit a party list which shall alternate male and female candidates who shall then be given Parliamentary seats based on the number of seats that a party has been allocated. (Zebra form of representation).
  - (d) Part of the political parties fund be allocated among political parties as an incentive based on the number of women that a political party has nominated and who have been elected.
  - (e) Impose a party list system with proportional representation in which the parties will nominate alternate male and female candidates.
  - (f) Come up with a mechanism through which political parties can be induced into mainstreaming gender within the parties and nominate women to run for political office.
- Prescribe and apply stiff penalties against any political party or person who violates laws and regulations made for purposes of gender inclusivity.

- AG
- IEBC
- Political Parties

## Enhancing Participation of Women, Youth, Persons with Disabilities and Marginalised Communities

<p>Increased youth representation</p>	<ul style="list-style-type: none"> <li>• Develop and implement amendments to the Elections Act, 2011 allowing voter registration on the basis of waiting cards.</li> <li>• Formulate and enforce regulations requiring that political parties disclose the number of youth that are their members and officials and party's policy for affirmative action for women, youth, PWDs and marginalised communities as a requirement for registration.</li> <li>• Prescribe and apply stiff penalties against any political party or person who violates laws and regulations made for purposes of empowering the youth.</li> <li>• Political parties should revise their constitutions, recruitment rules and procedures, nomination rules and other basic documents which govern their internal affairs to ensure effective inclusion and participation by PWDs, women and youth in elections.</li> <li>• The IEBC should disaggregate election data based on age so as to understand the elective practices of the various age cohorts.</li> <li>• Operationalize Article 55 of the CoK 2010 and put in place an affirmative action policy and legislation for all to enjoy their social, economic and political rights.</li> <li>• Enact the legislation required under Article 100 (c) to promote the representation in parliament of Youth by August 27, 2015. This must be supported by a sound policy framework.</li> <li>• All stakeholders to play a role in the implementation of the Constitution. Civil society Organisations were requested to originate a Bill to implement Articles 100 and 55 of the CoK 2010.</li> <li>• The system of registration contributes to disenfranchisement because the process of registration is bureaucratic and requirements particularly that of having the ID cards of the parents as a prerequisite for registration is unreasonable.</li> <li>• The registration of nationals and refugees is conducted separately and recorded under one system. Any application by a foreigner previously registered as a refugee for registration as a citizen is immediately flagged out by the APHIS system. The Integrated Population Registration System needs to be enhanced. The system of registration contributes to disenfranchisement because the process of registration is bureaucratic and requirements particularly that of having the ID cards of the parents for as a prerequisite for registration is unreasonable.</li> <li>• CSOs should partner with the NRB in developing adequate voter registration strategies.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• ORPP</li> <li>• Political Parties</li> <li>• Parliament</li> <li>• NRB</li> </ul>
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## Enhancing Participation of Women, Youth, Persons with Disabilities and Marginalised Communities

<p>PWDs and marginalised people</p>	<ul style="list-style-type: none"> <li>• Develop a policy on special groups’ participation in elections and continuous monitoring of the policy implementation.</li> <li>• Implement the use of tactile ballots to promote the secrecy of ballot for PWDs.</li> <li>• The tactile voting mechanism requires that the voters are literate. This calls for cooperation in creating awareness through voter education between the IEBC and collaborating institutions.</li> <li>• Exempt candidates with disabilities from the requirement of resigning from the public service when seeking elective positions (Affirmative action measure for PWDs).</li> <li>• Legislation to enable Article 100 of the Constitution should be passed providing a clearer framework for political representation of PWDs.</li> <li>• Prescribe and apply stiff penalties against any political party or person who violates laws and regulations made for purposes of empowering PWDs.</li> <li>• Amend nomination regulations to require political parties to disaggregate party lists so that persons with disabilities are identified. A definition of a person with a disability must be clearly made. The Courts must also interpret the definition that is provided for PWDs.</li> <li>• The IEBC should mainstream disability into all its programming. Disability issues should be embedded integrally into programming such as voter registration, voter education and polling.</li> <li>• The Kenya National Bureau of Statistics must keep records of people with disabilities. In this regard, the KNBS must therefore liaise with the IEBC to facilitate elections.</li> <li>• The IEBC to continue to give persons with disability priority to vote including expectant women, the aged and infirm people.</li> <li>• Sign language may be as specific as to people within families and thus the IEBC has a challenge in communicating with people with hearing impairments. Thus the Commission should encourage such person to come to the polling centre with someone who understands their specific sign language.</li> <li>• The IEBC should put in place corrective mechanisms to ensure all polling stations are accessible to persons with disabilities.</li> <li>• The electoral laws relating to PWDs to be amended to include the requirement that persons (nominees) with disabilities either be registered with the National Council for Persons with Disabilities or certified by a medical doctor as such.</li> <li>• Political parties should strive to nominate persons with different kinds of disabilities.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• Political Parties</li> <li>• Judiciary</li> </ul>
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## Elections and Use of Information and Communication Technologies

Enhancing the application of technology, ensuring efficiency and promoting public confidence in the electoral process	<ul style="list-style-type: none"> <li>• Develop and implement strategies for sustainable and reliable use of technology in election administration and management.</li> <li>• Undertake feasibility studies before introduction of a new technology</li> <li>• Pilot test any new technology before utilization on a large scale elections.</li> <li>• The use of technology in the registration of voters should be configured to detect registration errors or fraud.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> </ul>
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## Cooperation and Participation

Enhancing ownership of the electoral process	<ul style="list-style-type: none"> <li>• Develop strategies to ensure broad public participation and information sharing among stakeholders in the electoral exercise.</li> </ul>	<ul style="list-style-type: none"> <li>• All stakeholders</li> </ul>
Dispute resolution	<ul style="list-style-type: none"> <li>• IEBC and the Judiciary to establish a forum through which pertinent issues that arise from the jurisdiction of the courts and the import of the decisions of the court on the performance of the duties of the IEBC may be discussed.</li> </ul>	<ul style="list-style-type: none"> <li>• IEBC</li> <li>• Judiciary</li> </ul>
Partnership with the media	<ul style="list-style-type: none"> <li>• Engage the media in undertaking advocacy, dissemination of electoral related information, civic and voter education.</li> </ul>	<ul style="list-style-type: none"> <li>• All stakeholders</li> <li>• Media</li> </ul>

## INTRODUCTION

The two day learning platform incorporated presentations and plenary discussions around key thematic areas namely: Elections Administration and Management in Kenya; Elections and the Legal Framework; Elections and Human Rights; Elections and Voter Education; Elections and Affirmative Action Strategies on Women Participation; Elections and the use of Information and Communication Technologies; Elections and Political Parties; and Elections and Youth Participation. The discussions encouraged dialogue between civil society organizations and pertinent state actors related to elections matters.

Specifically the forum sought to;

- i. Share by-election observation findings and recommendations to institutions engaged in elections;
- ii. Discuss, enrich and commence preparations on adoption of the recommendations on improving the management and administration of upcoming elections;
- iii. Develop a road map of required administrative and legal reforms within the current electoral cycle.

This report is structured in three main sections.

**Section I** captures the executive summary, the matrix of issues and recommendations from the learning platform, the introduction and the opening remarks. **Section II** is a summary of expert presentations clustered thematically and feedback of key recommendations from the plenary session discussions. Finally, **Section III** contains the report's appendices including the concept note, the workshop programme, the list of participants during the workshop and workshop photos. The recommendations

have been classified into seven thematic areas namely: Legal and policy framework interventions; Improving the electoral process; Streamlining and enhancing the mandates of electoral institutions; Voter education/civic education; Enhancing participation of women, youth, persons with disabilities and marginalised communities; Enhancing the application of technology in elections; and cooperation and participation.



*The Learning & Dialogue Participants' Group Photo*

## OPENING CEREMONY

### Opening Remarks by the Executive Director, Institute for Education in Democracy (IED)

The forum was opened by the Executive Director of IED, Mr. Brian Weke, who gave insightful remarks on the purpose of the learning and dialogue forum on elections and electoral processes.

He stated that the confidence, which the public had in electoral institutions before the 2013 general election was quickly eroded by the conduct of last general election, exemplified on one hand by a myriad of disputes, which subsequently arose after the election. As a result, as Mr. Weke noted, there was the need to ensure that the confidence in electoral institutions is restored if peace and democracy are to be sustained. He further added that the Judiciary and the IEBC, in particular, must quickly work towards building public trust



and improving their perception as independent arbiters in the electoral process, which has severely been dented by the recent accusations of corruption.

Mr. Weke further noted that there were many pieces of legislation relating to elections that required to be implemented including laws on political party financing and inclusivity and that the youth have been denied an opportunity to participate in matters of governance with about five million young people being disenfranchised. This was due to the fact that they were not registered as voters and lacked identification cards which are a prerequisite to registration and voting in Kenya.

Mr. Weke noted that while the Constitution required continuous voter registration. In the past, targeted voter registration conducted prior to the elections has worked much better, and therefore he recommended that the IEBC adopt this approach. He further noted that the tallying system was bureaucratic and that the bureaucracy must be eliminated or reduced for an efficient system. Mr. Weke invited the election donor group to start engaging in the electoral process and with the key actors early rather than waiting close to the elections to start providing both the technical and financial support.

He thanked the members of the TWG on elections, particularly KHRC, ICJ-K, and IED for their efforts to realize the forum.

## Remarks by Deputy Chair, Institute for Education in Democracy (IED)

Mr. Herbert Mwachiro read the welcoming remarks on behalf of the Chairperson of the Institute of Education in Democracy - Ms. Joyce Majiwa. He noted that the learning platform was a culmination of the initiative by IED, KHRC and ICJ-K under the umbrella of the TWG on elections in Kenya.

Mr. Mwachiro highlighted that since inception, IED's focus has been on strengthening democratic governance and accountability processes in Kenya and the Africa region. IED, as noted by Mr. Mwachiro, had played a critical role in supporting the successive electoral commissions in executing their constitutional

and statutory mandate particularly in the area of voter education and registration. In addition, IED has supported engendered legal and administrative reforms processes and has availed evidence based data on the electoral processes that has influenced decision making processes in regard to advocacy initiatives and the legal reform agenda in Kenya.

The learning platform is an opportune moment to begin dialogue on the roadmap towards cementing democratic elections in Kenya. This will add value to the upcoming elections in our country by drawing lessons under the watch of the implementation of the Constitution of Kenya 2010.

The Deputy Chair acknowledged the support and participation of stakeholders including development partners, IEBC, Judiciary, the Office of the Registrar of Political Parties and Political Party Representatives among others for their active participation in dialogue towards improving the conduct and management of elections in Kenya.

## Remarks by Vice Chairperson, Independent Electoral and Boundaries Commission (IEBC)

The Vice Chairperson of IEBC, Ms. Lilian Mahiri-Zaja presented a keynote address that highlighted the steps the IEBC has taken so far to ensure that the 2017 general elections are successful. She noted that the IEBC has already begun the process of evaluating the 2013 general election through an internal evaluation process targeting the electorate, external poll officials, constituency-based staff, the regions and the Directors. In this process, external perspectives were sought by conducting participatory evaluation workshops with political parties, Civil Society Organizations, Constitutional Independent Commissions, Government Agencies and Media. This activity has been concluded.



The IEBC has since embarked on a legal reform process to conduct a complete audit of all electoral laws, audit policy gaps, identify areas for review and draw amendments to the electoral laws and rules and regulations to enhance the integrity, relevance and adequacy of the legal framework following the IEBC audit of the last General Elections. It is hoped that this process will subsequently establish an empirical basis for repealing, consolidation and codification of existing laws and creation of new laws where need be.

The legal reform process is led by a taskforce which operates under the guidance of the Legal Reforms Enforcement, Code of Conduct, and Compliance Committee. It has undertaken internal reviews while engaging the Kenya Law Reform Commission and the Commission's external lawyers who handled most of the election petitions. A working report identifying the gaps and challenges within the legal framework was generated at the Taskforce's first workshop held in Naivasha 9-12 March 2014. The participants at that workshop included the Judiciary, Office of the Director of Public Prosecution, the Office of the Attorney General, the Office of the Registrar of Political Parties, External advocates and Commission's staff. The report has been subjected to further discussion at a Second Workshop held on 30<sup>th</sup> July - 4<sup>th</sup> August 2014, which generated a report and matrix on areas for review within the existing legal framework. The proposals made were subsequently subjected to further discussion at another Workshop held on 14<sup>th</sup> - 22<sup>nd</sup> September 2014 before Commissioners and Senior Management. At this workshop, participants sought to analyze the raft of proposals identified for possible amendments against the need to enhance the integrity, relevance and adequacy of the legal framework. Notable emerging issues from the exercise were summarized to include:

- Issues arising from dispute resolution in the nomination process.
- Timelines on determination of disputes arising from declaration of results.
- Issues relating to and arising from voter registration process and boundary delimitation.
- Procedures of pre-polling, polling, post-polling day and declaration of results.
- Possible amendments arising from conduct of election petitions and boundary delimitation.



*Ms. Lilian Mahiri-Zaja, Vice Chairperson, IEBC*

- Regulation and supervision of political parties.
- Overview and sustainability of the Campaign Finance Regulations.
- Use and sustainability of ICT in election processes.

The Vice Chairperson noted that IEBC had held a workshop where representatives from the Taskforce made presentations on the raft of proposals to the Commissioners for ratification as proposed by the Taskforce through the Legal Reforms Enforcement of the Code of Conduct Committee. The proposals have been validated and the Commission is in the processes of issuing drafting instructions to KLRC.

Going forward the Vice Chairperson noted that the Commission intends to share the matrix of proposals for amendment generated by the Taskforce with the Parliamentary Justice and Legal Affairs Committee before forwarding the same to the Hon. Attorney General for onward transmission to Parliament. The Commission will seek to engage stakeholders in the reform process with a view of ensuring inclusivity and public participation in review of all electoral laws.

## PRESENTATION SYNOPSIS

### SESSION 1: ELECTIONS ADMINISTRATION AND MANAGEMENT IN KENYA

**Presented by Ms. Elizabeth Kirema, Programme Head, Research, Documentation and Dissemination, IED**


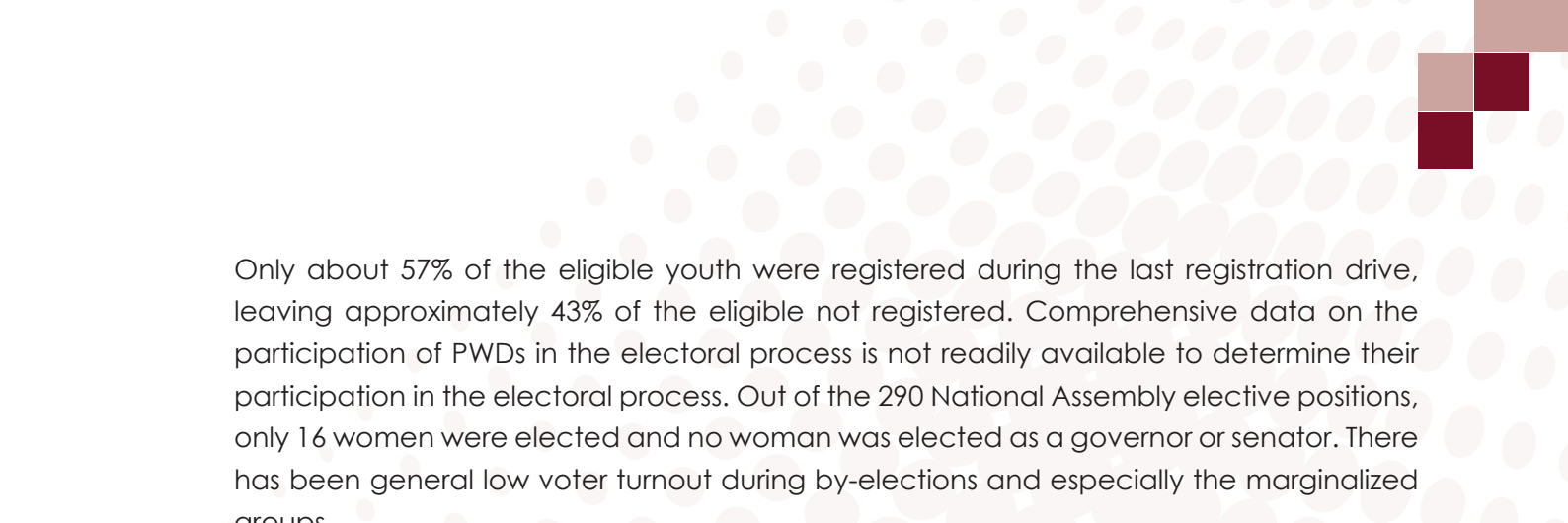
Ms. Elizabeth Kirema highlighted and discussed IED's key activities and experiences in regards to Election Administration and Management including election observation. She stated that IED's election observation is anchored within the electoral cycle. Since inception in 1993, IED has observed all the general elections, most of the by-elections and referenda utilizing observation strategies that are benchmarked by international/regional instruments on elections and the national electoral legal framework. In August 2010, IED played a key role in the formation of the Elections Observation Group (ELOG) that observed the 2010 constitutional referendum and the 4<sup>th</sup> March 2013 general elections.

Following the 2013 general election, IED has been involved in a number of monitoring and observation activities including: assessment of the principal register of voters; auditing of the institutional, administrative and legal framework that governed the 2013 general elections; observation of all the by-elections emanating from the 2013 general elections; spearheaded and has since formed a Technical Working Group (TWG) on Elections; and is currently undertaking an assessment of the political parties adherence to the law.

IED promotes the visibility of citizen observer groups in an election observation process which is critical in ensuring compliance and respect for the rule of law, deterring irregularities, and enhancing public trust and confidence in the electoral processes. Observer group findings and recommendations are useful in informing interventions for strengthened electoral processes.

Against the backdrop of a new constitutional dispensation and based on the observations made during the 2013 general elections which were the first under the Constitution of Kenya, 2010 the following issues were highlighted by IED as being key to the administration and management of elections;

- o Under representation of Women, Youth and Persons with Disability in the electoral process. Women account for 51% of the voting population but their registration rate is 6% lower than men. Only 0.8% of the 966,560 youth aged 18 years were registered voters, while only 2% of 768,714 youth aged 19 years were registered as voters in the last registration drive.



Only about 57% of the eligible youth were registered during the last registration drive, leaving approximately 43% of the eligible not registered. Comprehensive data on the participation of PWDs in the electoral process is not readily available to determine their participation in the electoral process. Out of the 290 National Assembly elective positions, only 16 women were elected and no woman was elected as a governor or senator. There has been general low voter turnout during by-elections and especially the marginalized groups.

- o Lack of comprehensive and reliable demographic data of Kenyans in the Diaspora to inform the development of an enhanced policy for the diaspora franchise. Only 2,637 Kenyans in the EAC were registered during the 2013 general election.
- o Lack of strategies to enhance the voting rights of those who are not able to cast their votes on Election Day, for instance, IEBC officials, security officers, observers, the hospitalized, diaspora voters etc. One of the general principles of the electoral system, as provided in Article 81 of the CoK 2010, is the freedom of citizens to exercise their political rights under Article 38.
- o Inadequate strategies for a continuous, standardized and targeted voter education to reach out to different groups in the society.
- o Inadequate strategies and resources for continuous voter registration processes as provided in the law. This has hampered the ongoing registration processes that have yielded low turnout.
- o Failure of technology in half of the polling streams during the general elections compared to its success in more than 88% of the polling streams during the by-elections.
- o Amendment of laws few months to elections day poses great challenges to the planning and implementation of electoral activities.
- o Lack of clarity on when the next general elections will be held - Article 101 of the CoK 2010 provides that general elections of members of parliament shall be held on the second Tuesday of August in every fifth year. Section 14(1) of the Elections Act 2011 is ambiguous in respect to actual announcement of the Election date. Parliament is making a proposal to amend the election date as provided for in the CoK 2010 to the third Monday of December every fifth year. This should be critically analyzed considering the tenure of the current IEBC Commissioners expires in November 2017.
- o Conduct of six elections in one day proves an ambitious task by IEBC and cumbersome for the general public. This poses inevitable challenges of holding numerous elections in a day.

- o Resolution of electoral disputes arising before declaration of results including disputes related to or arising from nominations by IEBC under Article 88(4) (e) of the CoK poses jurisdiction conflicts with Section 40 of the Political Parties Act 2011 that provides for the jurisdiction of PPDT. The constitutional role of the IEBC of resolving disputes emanating from party nominations burdens and conflicts with other mandated bodies.
- o The constitutional two-thirds gender principle rule is a looming challenge. There is lack of structured and purposive methodologies to realize the two-third gender rule for elective positions as well as party nominations.
- o Short timelines for the filling and determination of presidential petition. Currently the law provides for 21 days to file and determine presidential petition.
- o No clear timelines for elections candidate withdrawal after party nominations

### **Plenary/Recommendations**

- o There is a need to rebuild public confidence in the IEBC and the Commission must take the lead role in this.
- o The PPLC needs to be strengthened to the extent that people and political parties believe in it. Additionally, the visibility of the PPDT in settling electoral disputes should be enhanced.
- o The not more than two-thirds gender rule needs to be realized. Quick steps must be put in place for this realization to happen.
- o Remove the 80 extra National Assembly seats and the 47 women representatives so that the number of electoral representatives does not go too high.
- o Civil Society Organizations must exhibit impartiality in the electoral process.
- o Proper user testing and rolling out of technology in the election process is paramount especially in view of the problems caused by technology in the 2013 general election.
- o The law on nomination of candidates as provided under the Elections Act 2011 and the Political Parties Act 2011 was flouted. The political parties and candidates were not sanctioned for disregarding the law. Political Parties and candidates must learn to adhere to the rule of law. The law must also be amended to seal the loopholes that facilitated this disregard for the law.

- o The process of clearing candidates must adhere to the constitutional and legal requirements of integrity of the aspirants. The IEBC must not wait for a court case to be filed and determined before it can bar a candidate with integrity issues from the electoral process.
- o The IEBC must put in more effort to ensure that there is broad public participation and information sharing among stakeholders in the exercise of stock taking with regard to the 2013 general elections.
- o The IEBC must move quickly to register prisoners as voters within the context of the current law and in compliance with the Court order requiring the registration of prisoners as voters.
- o In international best practice post-election evaluation must be completed within 18 months. Thus, the IEBC are on the edge of this timeframe and hence must be complete their post-election evaluation soon.
- o The voter register containing the names of over 14,330,000 registered voters is in the custody of the IEBC and any interested party may make an application to the Commission to inspect the register.
- o Advanced voting and staggered voting may not work well under the current constitutional and legal framework for elections and therefore amendments must be made if this is to be realized.

In conclusion, it was noted that one of the major objectives of EMBs across the world is to achieve and sustain political sustainability of electoral administration which essentially means the capacity of the EMB to attain and maintain the trust and confidence of all the stakeholders. For the IEBC to achieve and maintain public confidence in the process and results during the next general elections and beyond, it must be able to assure independence, impartiality, transparency and professionalism.

## **SESSION 2: OVERVIEW OF THE GAPS IN THE ELECTION LEGISLATION IN KENYA: THE ROLE OF THE COURTS IN ELECTORAL PROCESSES**


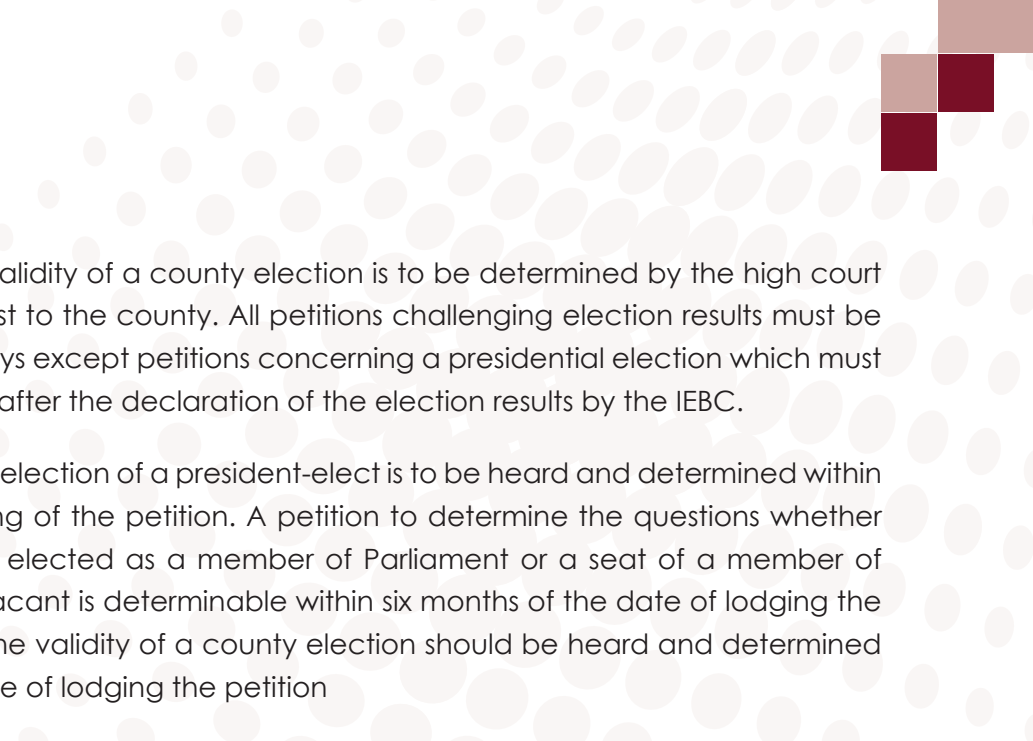
**Presented by Mr. Martin Oloo, Constitutional Lawyer**

Mr. Martin Oloo examined the legal framework governing elections, the loopholes in the framework and proposals for addressing them. He began by stating that elections in Kenya are usually hotly contested and highly adversarial. Disputes in the electoral process are therefore a natural consequence and thus there is a need to have a credible electoral process.

Mr. Oloo noted that electoral disputes arise at two levels: the first is during the nominations exercise before the elections and the others arising from the announcement of the election outcome. Some of the issues that arise from electoral disputes cannot be resolved adequately without considering the legal background anchored in Articles 34, 35, 36 and 38 of the CoK 2010, the Elections Act 2011, the Political Parties Act 2011, the Independent Electoral and Boundaries Commission Act 2011, as well as in International Law, Conventions and Treaties. Amendments to the Constitution may be necessary for some aspects of electoral reform.

Article 88(4) (e) of the Constitution vests in the IEBC the mandate to resolve electoral disputes relating to or arising from nomination processes. However, such disputes must fall within the resolution mandate of the Commission and must be resolved within seven days. Section 109 of the Elections Act 2011 vests in the IEBC the power to make regulations governing aspects of the electoral process subject to approval by the National Assembly. Among the areas the regulations are expected to cover is provision for complaints resolution mechanisms and for the manner of settlement of electoral disputes.

The CoK 2010 required Parliament to enact a legislation to establish mechanisms for timely settling of electoral disputes. To fulfill this requirement, Parliament enacted the Elections Act, 2011, that has various provisions touching on election disputes resolution for instance: a petition to challenge the election of a president-elect is to be lodged in the Supreme Court for determination; petitions to determine the questions whether a person has been validly elected as a member of Parliament or a seat of a member of Parliament has become vacant are determinable by the High Court; and a petition seeking a declaration that a seat in Parliament or a County Assembly has not become vacant shall be presented within twenty-eight days after the date of publication of the notification of vacancy by the relevant Speaker. A petition to seek a declaration that a seat in Parliament has become vacant may be presented at any time. The CoK 2010 permits either personal service of election petitions or service by advertisement in a newspaper with national circulation.



A question regarding the validity of a county election is to be determined by the high court within the county or nearest to the county. All petitions challenging election results must be filed within twenty-eight days except petitions concerning a presidential election which must be filed within seven days, after the declaration of the election results by the IEBC.

A petition to challenge the election of a president-elect is to be heard and determined within fourteen days after the filing of the petition. A petition to determine the questions whether a person has been validly elected as a member of Parliament or a seat of a member of parliament has become vacant is determinable within six months of the date of lodging the petition. A question as to the validity of a county election should be heard and determined within six months of the date of lodging the petition

The CoK 2010 and the Elections Act 2011 are silent on the mode of resolving disputes arising from the first round of presidential elections. It escaped the framers of the Constitution that disputes and challenges could arise from the first round presidential elections where a candidate may dispute the results as announced by the IEBC.

Article 140 of the CoK 2010 only envisages disputes relating to challenges to the election of a president- elect and provides that they have to be heard by the Supreme Court. In the absence of clear mechanisms of resolving first round presidential election results disputes, parties may resort to one of the following ways of challenging the first round presidential election results:

- (a) Judicial Review proceedings in the High Court against the IEBC.
- (b) File a constitutional petition in the High Court grounded on amongst others issues, an infringement of the right to free and fair elections as granted in Article 38 and the right to fair administrative action as granted in article 47 and other fundamental rights that the action may find were infringed in the course of the elections.
- (c) Parties may also invoke the unlimited original jurisdiction of the High Court as conferred in article 165 (3) of the Constitution to challenge the results before the High Court.

However, any of the above proposed methods would be subject to the usual court process prone to delays. The competition for space must be considered against the pressure of time imposed by the CoK 2010 which stipulates the timeframe of within 30 days from the date of the first election, within which the runoff election is to be held.

In determining an electoral dispute, the Courts must be informed by citizens' rights, the principles of the Electoral System and the principles of free and fair elections among other considerations.

## Plenary/Recommendations

- o Addressing the loopholes of the constitutional and legal framework will require substantive amendments. There must be genuine motivation for the Constitution to be amended.
- o It was not anticipated that there would be appeals from the Court of Appeal to the Supreme Court in terms of election petitions. The Supreme Court assumed jurisdiction from its mandate to hear appeals that arise from Constitutional matters. Hence there were no rules. It is therefore time to formulate rules to govern appeals from the Court of Appeal to the Supreme Court, to define which matters and the timeframe required.
- o It is impossible to hear a Presidential election petition within 14 days. The debate that informed the constitutionalization of 14 days was more political than sound practical and legal thinking. An amendment to the CoK 2010 was proposed to have the time frame for determination of the Presidential Petition extended to at least 28 days.
- o The CoK 2010 provides that the date of the next election is to be on the 2<sup>nd</sup> Tuesday of August of every 5<sup>th</sup> successive year. However, if elections are to be held in December as the proposed in the suggested amendment of the date as set in the CoK 2010, thinking of the date of the next general election must consider both the term of the IEBC Commissioners and the term of the Judges of the Supreme Court who are mandated to listen to an election petition arising from the Presidential election.
- o The Supreme Court must be excluded as an appellate court with respect to election petition as is envisaged by the Constitution.
- o The performance of women in the 2013 general election was poor and thus there needs to be more concerted efforts towards the realization of the not more than two-thirds rule.
- o A ceiling must be capped on the number of Members of Parliament so as not to have them being an economic burden on the tax payer.
- o The IEBC should speed up the process of putting in place mechanisms for the enfranchisement of prisoners for them to participate in the presidential elections and referenda.
- o The IEBC and the Judiciary to establish a forum through which pertinent issues that arises from the jurisdiction of the courts and the import of the decisions of the court on the performance of the duties of the IEBC may be discussed.

There is a need to have a clear roadmap to the elections which provides an opportunity for building synergies amongst the various stakeholders.

## SESSION 3: ELECTIONS AND USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES

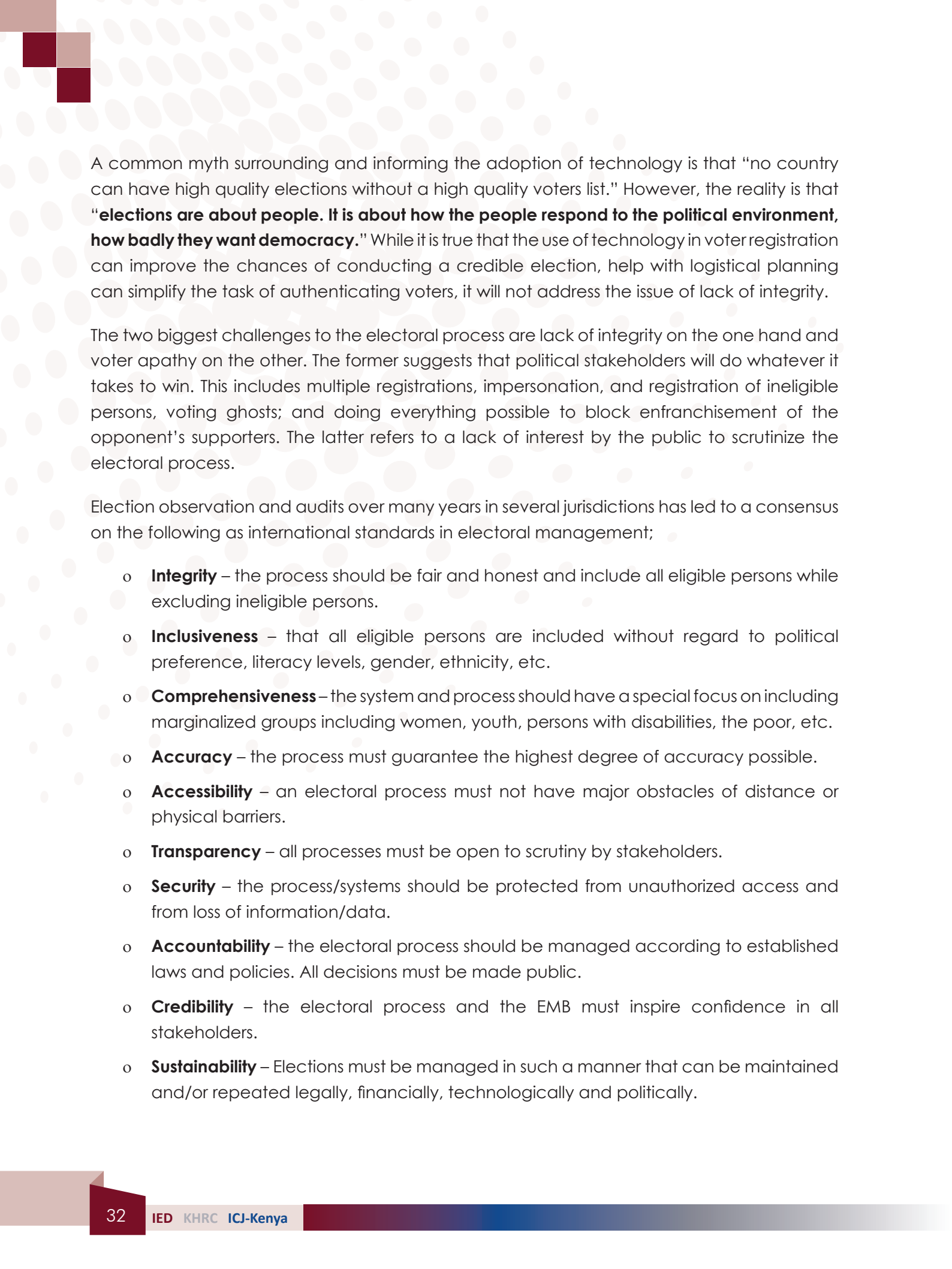
Presented by Mr. Michael Yard, Chief of Party, IFES – Kenya and Election Technology Expert

In his presentation Mr. Yard, the Kenya Country Director of the International Foundation for Electoral Systems (IFES) examined the role that technology can play in enhancing the electoral process in Kenya. He contrasted the challenges faced by technology in the last general election with challenges faced by other jurisdictions across the world and warned that technology may not be the solution to the electoral problems in Kenya.

First, Mr. Yard pointed out that in a changing environment in which technology is finding more and more uses, technology has a role to play in elections. The proper role of technology in elections is: to serve democratic principles particularly of transparency and accountability; increase transparency; empower voters, candidates, civil society; promote government “of the people, for the people, by the people”; and to improve efficiency of the electoral systems.

The monitoring of experiences with technology from around the world has revealed three things:

- o **Relationship of technology cycle to election cycle:** Technology advances very fast that it becomes difficult to predict the kind of technology that would be in place in the next five or ten years. Thus where technology is adopted it would require constant updates and upgrades.
- o **Leviathan tendency:** Related to advances in technology is the fact that upgrading, updating and maintenance of technology consumes considerable resources that would otherwise have been put some good use in other aspects of the election process and cycle. Thus technology is like a leviathan, when it is adopted it consumes more and more technology.
- o **Some guiding principles:** It was suggested that when considering adopting technology it is important to identify the problem by describing the system as it is and the way it should be. The next consideration is to pilot by conducting feasibility studies in either a mock registration or mock election. In Kenya a pilot study was conducted in three constituencies during the 2010 referendum ahead of the 2013 general election. Computerizing a well-organized process will magnify the efficiency and contrary computerizing a poorly organized process will magnify the chaos.

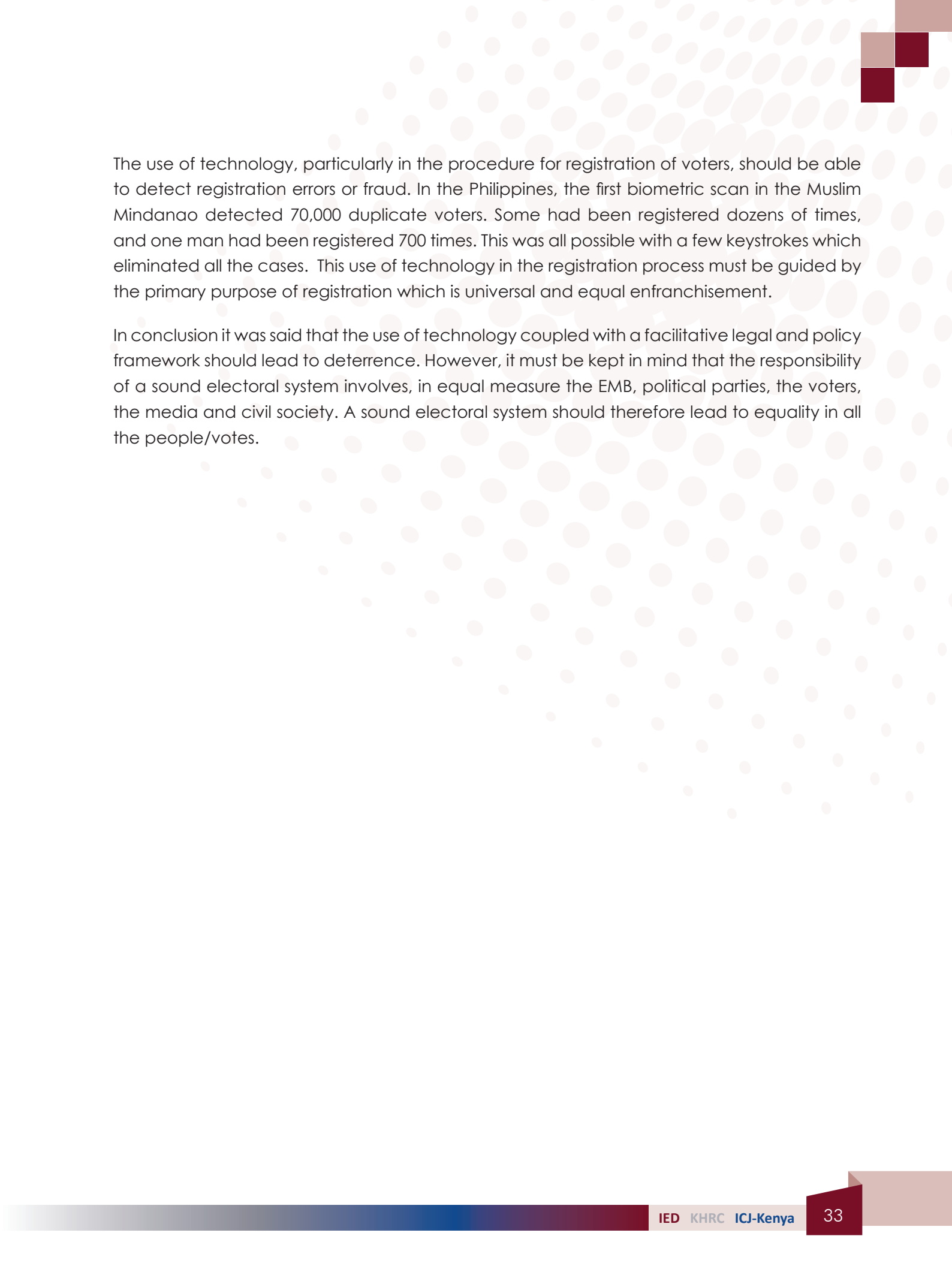


A common myth surrounding and informing the adoption of technology is that “no country can have high quality elections without a high quality voters list.” However, the reality is that **“elections are about people. It is about how the people respond to the political environment, how badly they want democracy.”** While it is true that the use of technology in voter registration can improve the chances of conducting a credible election, help with logistical planning can simplify the task of authenticating voters, it will not address the issue of lack of integrity.

The two biggest challenges to the electoral process are lack of integrity on the one hand and voter apathy on the other. The former suggests that political stakeholders will do whatever it takes to win. This includes multiple registrations, impersonation, and registration of ineligible persons, voting ghosts; and doing everything possible to block enfranchisement of the opponent's supporters. The latter refers to a lack of interest by the public to scrutinize the electoral process.

Election observation and audits over many years in several jurisdictions has led to a consensus on the following as international standards in electoral management;

- o **Integrity** – the process should be fair and honest and include all eligible persons while excluding ineligible persons.
- o **Inclusiveness** – that all eligible persons are included without regard to political preference, literacy levels, gender, ethnicity, etc.
- o **Comprehensiveness** – the system and process should have a special focus on including marginalized groups including women, youth, persons with disabilities, the poor, etc.
- o **Accuracy** – the process must guarantee the highest degree of accuracy possible.
- o **Accessibility** – an electoral process must not have major obstacles of distance or physical barriers.
- o **Transparency** – all processes must be open to scrutiny by stakeholders.
- o **Security** – the process/systems should be protected from unauthorized access and from loss of information/data.
- o **Accountability** – the electoral process should be managed according to established laws and policies. All decisions must be made public.
- o **Credibility** – the electoral process and the EMB must inspire confidence in all stakeholders.
- o **Sustainability** – Elections must be managed in such a manner that can be maintained and/or repeated legally, financially, technologically and politically.



The use of technology, particularly in the procedure for registration of voters, should be able to detect registration errors or fraud. In the Philippines, the first biometric scan in the Muslim Mindanao detected 70,000 duplicate voters. Some had been registered dozens of times, and one man had been registered 700 times. This was all possible with a few keystrokes which eliminated all the cases. This use of technology in the registration process must be guided by the primary purpose of registration which is universal and equal enfranchisement.

In conclusion it was said that the use of technology coupled with a facilitative legal and policy framework should lead to deterrence. However, it must be kept in mind that the responsibility of a sound electoral system involves, in equal measure the EMB, political parties, the voters, the media and civil society. A sound electoral system should therefore lead to equality in all the people/votes.

## SESSION 4: RE-LOOKING AT THE IMPLEMENTATION OF AFFIRMATIVE ACTION/ DOCUMENTED STRATEGIES ON WOMEN PARTICIPATION


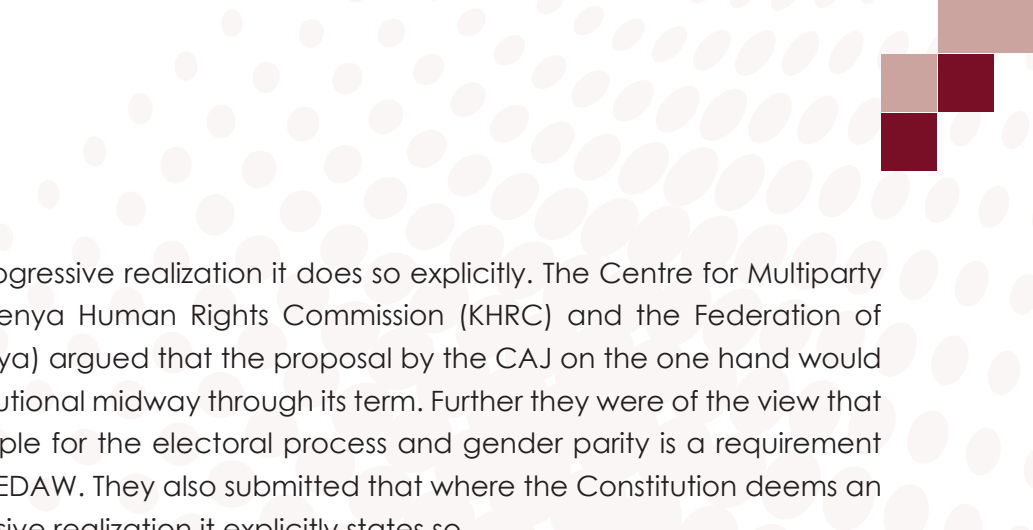
**Presented by Ms. Grace Maingi, Executive Director, Uraia Trust**

In her Presentation, Ms. Grace Maingi looked into the role played by women in the 2013 general election. She examined the requirements for affirmative action and discussed whether these requirements had been met, and the challenges that led to the failure to realise the constitutional gains for the women of Kenya as anticipated in the CoK 2010.

Ms. Maingi began by noting that the substantive provisions of the CoK 2010, which provide a basis for gender representation, are Articles 27(8) and 81(b). In Article 27(8) the State is required to take legislative and other measures, in addition to those contemplated under clause (6) to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender. In Article 81(b) the electoral system is expected to comply with the principle that, among others, not more than two-thirds of the members of elective public bodies shall be of the same gender. The Constitution thereafter goes ahead to require in Article 100 to charge Parliament with an obligation of enacting legislation to promote the representation in Parliament of women; persons with disabilities; youth; ethnic and other minorities; and marginalized communities.

In ***Speaker of the Senate & another v Hon. Attorney-General & another & 3 others*** (Advisory Opinion No. 2 of 2012) the Supreme Court of Kenya delivered an advisory opinion on, among other things, whether Article 81 (b) as read with Article 27(4) (6) and (8), Article 96, 97, 98, 177(1) (b), 116 and Article 125 of the CoK 2010 requires progressive realization of the enforcement of the one-third gender rule or requires the same to be implemented during the general elections scheduled for forthcoming general election. The Attorney General's application was that there is a perceived inconsistency or potential inconsistency between the equality principles in Article 27 and the specific provisions on membership of the National Assembly and the Senate as provided in Articles 97 and 98. Secondly the AG contended that the foregoing provisions of the Constitution were silent on the effective date. The AG further argued that political parties were central to the applicability of the provisions yet there were no corresponding and appropriate legislative arrangements made through the Political Parties Act, 2011 and the Elections Act 2011. Finally the AG submitted that there was uncertainty of the language used in the Constitution.

On its part, the Commission on Administrative Justice (CAJ) argued that, in principle, the gender equity rule should be given immediate effect. The Commission for the Implementation of the Constitution (CIC) submitted that there was no controversy over Article 81 (b) and that where




the Constitution talks of progressive realization it does so explicitly. The Centre for Multiparty Democracy (CMD), the Kenya Human Rights Commission (KHRC) and the Federation of Women Lawyers (FIDA Kenya) argued that the proposal by the CAJ on the one hand would leave Parliament unconstitutional midway through its term. Further they were of the view that Article 81(b) is a key principle for the electoral process and gender parity is a requirement under Articles 4 and 7 of CEDAW. They also submitted that where the Constitution deems an action as requiring progressive realization it explicitly states so.

The Supreme Court's majority decision held that Article 81 (b) stands generally as a principle which would only transform into a specific enforceable right after it is supported by a concrete normative provision. Therefore Article 81 (b) is not capable of immediate realization without certain measures being taken by the State. The Court directed that legislative measures for giving effect to the one-third to two thirds gender principle under Article 81 (b) and in relation to the National Assembly and Senate should be taken by 27<sup>th</sup> August 2015.

On the other hand the minority decision of the Supreme Court held *inter alia* that Article 177(1) (b) read with the provisions of Article 27(4), (8) and 81(b) make it abundantly clear that the two thirds gender principle has to be immediately realized. Further the spirit of Article 10 on national values and principles of governance reinforces the argument for immediate implementation. Chief Justice Mutunga restated the role of political parties in ensuring their party lists do not contain an insufficient number of female candidates. There is a need for them to establish internal mechanisms to ensure that this is realized.

Therefore, this provided a backdrop against which Kenya approached the 2013 general elections which witnessed the following gender outcomes: only 16 women were elected out of 290 constituencies as Members of National Assembly; 47 women elected to the National Assembly as County Women Representatives; A paltry 82 women were elected as County Assembly Ward Representatives out of a possible 1,450 wards. Six women were elected as Deputy Governors and no woman was elected either as a governor or senator in all of the 47 Counties.

The gender representation in the National Assembly following the general election stood at 19% women and 81% men. Five women were nominated out of the total 12 seats up for nomination bringing the total number of women to 68. In the Senate the composition was slightly better with 27% women against 73% men. However, all of the women in the Senate were nominated as none was elected. Two women were also nominated to represent youth and persons with disabilities. In total there are 18 women in the Senate. At the County Assemblies level, 82 women were elected out of a possible 1,450 County Assemblies Ward Representatives. An additional 680 women were nominated across the 47 counties to bring the numbers to 762 in total which translates to 34%.



Following this poor performance, the suggested way forward is to enact legislation for the operationalization of Article 100; put in place affirmative action measures as envisioned in Article 27(8) of the Constitution; revamp the internal mechanisms of Political Parties in Kenya; and amend the Political Parties Act 2011 and the Elections Act 2011. However, the current Parliament's composition will still be a dilemma come the 27<sup>th</sup> August 2015.

A technical working group was constituted by the Attorney General on 3<sup>rd</sup> of February 2014 and was tasked with the mandate of finding means to implement the Supreme Court Advisory on the two-thirds gender principle. So far all the proposals that have been tabled have failed to provide a means which avoids either amending the Constitution, fresh delimitation of boundaries or increasing additional members of the National Assembly.

Suggestions that have so far been made include:

- o Gender top-up through party lists. This is similar to the Constitution of Kenya (Amendment) Bill, 2011
- o Reconfiguration of constituencies to counties
- o Reduction of constituencies
- o Voting for a party ticket
- o Rotational seats for affirmative action
- o Best runner up
- o Gender voluntary quota
- o Gender and incentives

In conclusion, the presenter noted that there is a need to retain the gains in the Constitution. However, this would require political good will to establish a workable framework which in itself may need to be hybrid in nature. There is also need to take a multi pronged approach to address the issue. Women were further encouraged to vie for elective positions and thus a shift is required to move away from the ordinary strategies to more innovative ways to obtain satisfactory representation. There is also need to put in place equality legislation that incorporates affirmative action, and promote change of attitude.

## Plenary/Recommendations

1. Develop strategies to increase gender representation in Parliament. The following suggestions were made:
  - o Amend the Constitution as was proposed in the Mutula proposal (Bill) by amending Articles 91, 96 and 97 of the Constitution. This should be coupled with a ceiling on the number of MPs.
  - o Part of the political parties fund to be allocated among political parties as an incentive based on the number of women that a political party has nominated and who have been elected.
  - o Abolish one constituency per county to establish two positions for women per county. This would increase the number of women to 94 in the very least.
  - o Impose a party list system with proportional representation in which the parties will nominate alternate male and female candidates.
  - o Come up with a mechanism through which political parties can be induced into mainstreaming gender within the parties and nominate women to run for political office.
  - o Revoke all Constituency boundaries to establish one super Constituency called Kenya. Electorate to vote for the most popular party and the parties to be allocated seats depending on the percentage of votes that they garner. Parties to submit a party list which shall alternate male and female candidates who shall then be given Parliamentary seats based on the number of seats that a party has been allocated. (Zebra form of representation).
2. Develop strategies to strengthen intra political party democracy.
3. It is important to address issues of gender at the political party level.
4. Article 100 must be legislated upon. A Bill must be initiated by the relevant bodies as a matter of urgency. This is to provide for election of members of parliament with consideration of women, youth and other marginalized groups.

## SESSION 5: ELECTIONS AND VOTER EDUCATION

**Presented by Ms. Ann Nderitu, Ag. Voter Education and Partnerships Director, IEBC**

In this presentation Ms. Anne Nderitu from the IEBC looked into the strategies that were applied in voter education and discussed the lessons learned from the IEBC's perspective. Ms. Nderitu began by noting that the IEBC plays a critical role in conducting or supervising referenda and elections. In particular the Commission is responsible for: the continuous registration of citizens as voters; regular revision of the voters' roll; delimitation of boundaries for constituencies and wards; and regulating the process by which parties nominate candidates for elections.

### **Plenary /Recommendations**

- o The dichotomy between civic education and voter education must be established. Civic education ought to be continuous.
- o Civic education must contain an element of preparation of both voters and candidates to accept the outcome of the elections.
- o The IEBC must facilitate the wider participation of all the stakeholders in talks in the period leading up to the elections so that all the parties take responsibility for the outcome of the election process.
- o Political parties must play a part in conducting voter education since they are an integral part of the electoral process.
- o Voter education programmes must start early and must be continuous. The IEBC and other stakeholders must avoid waiting to start very late towards the Election Day.
- o A strategy must be developed through wide stakeholder participation in the voter education process. Continuous voter and civic education must start from a very early age.
- o The approaches must be customized for effectiveness and suitable content developed.
- o There must be an emphasis on up-scaling the training of temporary polling staff of the IEBC.
- o Increased funding must be made available for voter education. This funding must come from the taxpayer and the initiatives must be sustainable.
- o An independent body should be set up and which enjoys goodwill from all the parties to exercise the voter education mandate.

- o The IEBC to engage with the Ministry of Education (MoE) and the teachers heads associations at the primary and secondary level so that they may be able to begin civic and voter education in schools.
- o Voter education must be specific to the groups that are being targeted. Practical strategies must be employed by the IEBC.
- o All stakeholders must work with the IEBC in facilitating voter education, particularly by sharing data gathered on methods that work in terms of voter education.
- o Political parties and the IEBC must forge partnerships to ensure that they jointly conduct civic/voter education. The IEBC to facilitate the political parties by supplying them with standardized IEC materials and curricula.
- o Civic education must be considered to shape values among the citizens.
- o Donor institutions to partner with the IEBC and provide funding for civic and voter education.
- o Political parties must be encouraged to use some of the money made available to them to conduct civic/voter education.
- o Party agents must be adequately trained on election processes and election observation beforehand to get access to the polling/tallying centres.
- o All actors must have strategies for preparing for elections. This includes: the IEBC; civil society; political parties and the public must be prepared for the elections in terms of strategy, resources, policies, laws and execution.
- o The role of lawyers in the management of public offices was brought into sharp focus. As officers of the court, lawyers must lead the institutions which they head into respecting the rule of law and obeying court decisions rather than disregarding decisions which they do not agree with.
- o Political parties should exhibit conduct that shows their readiness to implement the constitutional and legal requirements of the electoral process as well as obeying the rule of law.
- o Gender must be looked at more critically.
- o The IEBC must not use elections as testing grounds for new technology because elections are emotive process and any mishap may lead to chaos.
- o Recognize the role of the public as the majority shareholder in the electoral process.
- o Adequate civic education needs to be done as well as voter education. The public must be sensitized on the roles of the leaders at the County level.

## SESSION 6: HUMAN RIGHTS ASPECTS IN ELECTIONS: THE RIGHTS OF SPECIAL INTEREST GROUPS

**Presented by Ms. Carol Werunga, Programme Advisor, Electoral Governance, KHRC**

Ms. Carol Werunga interrogated the theoretical and practical application of human rights in the electoral process. She noted that past processes have been punctuated with rights violations and identified trouble spots. She then called for human rights based approach in electoral management and conduct and made recommendations for consideration by the stakeholders going forward on how to entrench human rights in the electoral process.

Ms. Werunga began her presentation by noting that the sovereign authority of the Kenyan people is affirmed by Article 1 of the Constitution of Kenya, 2010. This is either directly or through their democratically elected representatives. This position is also buttressed by several International and Regional human rights instruments including:

- o The Universal Declaration on Human Rights (UDHR).
- o The International Covenant on Civil and Political Rights (ICCPR).
- o The International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- o The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- o The UN Convention on the Rights of Persons with Disabilities (UNCRPD).
- o The African Charter on Human and People's Rights (ACHPR).

The KHRC has continued to monitor elections in Kenya and has scrutinized the extent to which fundamental rights and freedoms necessary for the democratic and accountable conduct of the electoral process have been applied, protected and promoted in accordance with national principles and international instruments. The specific rights which the KHRC has closely monitored include:

- o Rights to campaign and elect representatives to a public or political office.
- o Right to vote.
- o Right to integrity and security of persons.
- o Right to freedom of expression.
- o Right of the independent press to operate freely.
- o Right to access information.

- o Equality and freedom from discrimination.
- o Political rights (Article 38 of the Constitution).

The Commission has in the past monitored and continues to monitor aspects of the electoral process during general and by-elections. It monitors hate speech and offensive language in electoral campaigns; corruption and abuse of public resources and offices; electoral violence; and the participation of PWDs and women in the political process. From the above exercises, KHRC has been able to observe that:

The right to vote is intrinsically linked to registration of voters and the maintenance of a voters' roll that is accurate, comprehensive, inclusive, and up-to-date. Documented challenges that were thought to have infringed on the right to vote during the registration process include:

1. Lack of sufficient BVR Kits which necessitated the sharing of kits between/among registration centres and polling stations.
  2. Reduction of the number of days for registration of voters from 90 days as required by law to 60 days prior to the March 2013 general elections.
  3. Failure to put in place measures that would have promoted inclusivity and particularly the participation of the PWDs in the registration exercise. This was evidenced by the fact that registration centres were mostly inaccessible; the BVR system did not cater for some types of disabilities; and that registration data was not disaggregated on the basis of disability.
  4. Failure to facilitate the participation of the Youth by ensuring accessibility of identification cards in a timely manner or alternatively putting in place measures to allow the registration of youth voters by alternative means of identification.
- On the issue of voter education and the right to information, KHRC noted that voter education manuals were produced late, only in English and Kiswahili and did not cater for visually impaired voters. It was also noted that political utterances and infiltration of the voter education exercise by politicians and political messages was rampant.
  - The party nomination exercises lacked adequate measures to promote the participation of PWDs. Some parties levied high nomination fees during the 2013 electioneering period. The direct nomination of candidates by parties especially with regard to by-elections violated the political rights of the members of that party and constituency.
  - With regard to the nomination of representatives through the Party List System, it was observed that some parties failed to disaggregate special interest group data. Secondly frequent revisions of party lists by some parties saw PWDs replaced on party lists.

- Other issues documented by the KHRC include that: the current system of assisting PWDs and other assisted voters to cast their ballot violated their right to a secret ballot; the withdrawal of candidates nominated through party primaries by the elections without allowing them an opportunity to replace that candidate was a violation of the electorates' rights; violence and voter intimidation are rife in the Kenyan electoral context and that not much has been done to address the problem. Lastly, incidences of voter bribery and buying of votes were widespread in a number of areas and is common across the political divide.

### **Plenary/Recommendations**

In the opinion of the KHRC, implementing the following recommendations may safeguard the rights of the voters:

- o Independent Commissions and Offices to play a greater role in conducting integrity tests on the entire electoral processes and particularly to audit the conduct of the IEBC with respect to processes such as voter education and voter registration.
- o The IEBC to implement the use of tactile ballots to promote the secrecy of ballot for visually impaired PWDs.
- o The IEBC should allocate sufficient time for voter registration.
- o The IEBC should combine both an *active* and *passive approaches* to the registering of voters.
- o The IEBC should be held to account for supervising the electoral and nomination process that has led to some counties having no PWDs representation.
- o The IEBC should mainstream disability into all its programming. Disability issues should be embedded integrally into programming such as voter registration, voter education and polling.
- o Legislation to enable Article 100 of the Constitution should be passed providing a clearer framework for political representation of PWDs.
- o Political parties should revise their constitutions, recruitment rules and procedures, nomination rules and other basic documents which govern their internal affairs to ensure effective inclusion and participation by PWDs, women and youth in elections.
- o The Kenya National Bureau of Statistics must keep records of people with disabilities. In this regard, the KNBS must therefore liaise with the IEBC to facilitate elections.
- o IEBC should consider registering the youth who have waiting cards but whose cards have not yet been issued on the basis of the waiting card so as not to disenfranchise them.

- o The IEBC should invest in both theoretical and practical (simulation of actual balloting) voter education.
- o The IEBC to continue to give persons with disability priority to vote including expectant women, the aged and infirm people.
- o Sign language may be as specific as to people within families and thus the IEBC has a challenge in communicating with people with hearing impairments. Thus the Commission should encourage such person to come to the polling centre with someone who understands their specific sign language.
- o There should exist one principal register only. The register should be availed by the IEBC on special request.
- o At the last general election, the Parliament passed a law providing for registering prospective voters using national Identification waiting cards, which was not gazetted. Thus this meant that those that had registered using waiting forms were not allowed to vote.
- o The tactile voting mechanism requires that the voters are literate. This calls for cooperation in creating awareness through voter education between the IEBC and collaborating institutions.
- o The IEBC should put in place corrective mechanisms to ensure all polling stations are inaccessible to persons with disabilities.
- o Registration of voters should in future be done concurrently with the registration of persons for national identity cards.
- o It is a violation of the rights of the electorate in a constituency for a candidate to withdraw his/her candidature unilaterally and without good reason. This is an infringement on the freedom of choice. The IEBC must put in place measures to curb this practice as it offends the principles of democracy.
- o The electoral laws relating to PWDs to be amended to include the requirement that persons with disabilities either be registered with the National Council for Persons with Disabilities or certified by a medical doctor as such.
- o Political parties must disaggregate the party lists so that PWDs are identified.
- o The definition of a person with a disability must be made. The Courts must interpret the definition that is provided for PWDs.
- o Persons who abuse processes including the requirement of nomination of PWDs must be dealt with through prosecutions.

## SESSION 7: THE ROLE OF POLITICAL PARTIES IN ELECTIONS

**Presented by Ms. Lucy Ndung'u, Registrar of Political Parties, ORPP**

This presentation by Ms. Lucy Ndungu discussed the historical developments of political parties and elections in Kenya. She then explained the role of political parties and the enabling legislation towards the realisation of a democratic electoral process.

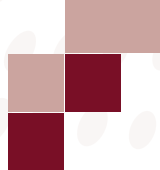
The recent history of Kenya's political parties can be traced back to the repeal of Section 2A of the Constitution in 1991. This allowed for the emergence of multiparty democracy. Prior to this, Kenya had been a *de facto* one party state. There was no institutional and legal framework to govern political parties and a majority of them operated like private associations. In fact the registration of political parties was done under the Societies Act. At one point following the re-emergence of multi-party democracy, a total of 168 parties had been registered.

In 2007 the Political Parties Act was enacted and was operationalized on 1<sup>st</sup> July 2008. It established within the defunct Electoral Commission of Kenya (ECK), the Office of Registrar of Political Parties whose functions were to register, regulate and fund political parties. Subsequently by the year 2009 there was a reduction of the fully registered political parties from 168 to 47. This position was to further change following the promulgation of the new Constitution in August, 2010.

The Constitution of Kenya, 2010 currently declares Kenya a multi-party democracy under Article 4. Thus, political parties are an integral part in the electoral process. Political parties aggregate the interests of the society and present them through defined ideology and thus affirm the sovereignty of the people of Kenya as stipulated under Article 1. They also are a symbol of our unity and are bound by the national values and principles of governance set out in Article 10. Since parties are corporate (voluntary) organizations, they provide an opportunity for Kenyans to exercise free political choices through membership and voting, thus realize political rights as enunciated under Article 38 and which include the right to: form, or participate in forming of a political party; participate in the activities of, or recruit members; and campaign for a political party or cause.

Political parties are required to preserve the right of voters to vote and ensure that leaders ascend to power since through them, the will of the voters is consolidated. They are central in the electoral process and deliberate to ensure that legitimate leaders ascend to power.

Articles 91 and 92 of the CoK 2010, which are operationalized by Section 7 of the Political Parties Act 2011, provides for the dos and the don'ts for political parties. Hence parties must: have a national character; have a democratically elected governing body; abide by the



democratic principles of good governance; promote and practice democracy through regular, free and fair elections; respect the rights of all persons to participate in the political process; promote inclusivity and fairness by including minorities and marginalized groups; respect and promote human rights, fundamental freedoms, gender equality and equity; promote the objects and principles of the Constitution and the rule of law; and subscribe to and observe the Code of Conduct for political parties.

On the other hand, each party is enjoined throughout the electoral cycle to ensure that its members and supporters do not: found parties on religious, linguistic, racial, ethnic, gender, or regional basis; engage in or encourage violence; establish or maintain a paramilitary force, militia; engage in corruption and bribery; accept or use illicit or illegal money; advocate hatred that constitutes ethnic incitement, vilification or incitement to cause harm; obstruct or disrupt breakup or in any other way interfere with the meeting of another party; and use public resources to promote the interests of its candidates in elections save as is expressly provided by the Constitution or by Act of Parliament.

The Political Parties Act as enacted in 2011 requires that any party that wishes to participate in an election, must be registered. Section 7 of the Act sets out the requirements for registration of parties including recruitment of not less than 1000 members from at least 24 counties in Kenya; and reflecting regional, ethnic diversity, gender balance, and representation of minorities and marginalized groups thus promote inclusiveness.

Political parties are the primary instruments through which the gender requirements set out in the Constitution may be achieved. They also promote integrity as stipulated in Chapter Six of the Constitution by submitting declarations on sources of funds; maintaining political party records which include and informing the Registrar of any changes to those records. During elections, political parties are required to prepare all relevant deeds and the election compliance instruments and forward the same to the IEBC.

Political parties however face many challenges in their administration. Some of these challenges include: lack of democracy in political party primaries; gender mainstreaming; ethnic identities; violence; internal political party wrangles; inadequate funding; and a lack of distinct party ideologies.

To address the majority of these challenges, political parties and the Office of the Registrar of Political Parties going forward will:

- o Spearhead a process for drafting standardized nomination rules with other stakeholders including KNHRC, IEBC, and CSOs.

- o Collaborate with the National Gender and Equality Commission on the realization of the two-thirds gender principle.
- o Encourage political parties to embrace diversity. The ORPP is currently auditing the composition of political parties' governing officials.
- o Partner with stakeholders to promote peace, specify sanctions for offences as well marking hotspots and early warning signs.
- o Develop an inclusivity policy.
- o Promote internal party dispute resolution mechanisms through adoption of the model rules.
- o Team up to implement the Campaign Finance Act 2013 and lobby for the amendment of Section 25 of the political Parties Act 2011 on the distribution of funds.
- o Encourage parties to have specific ideologies through development of strategic plans and policy documents.
- o Political parties should train their polling agents thoroughly and in advance to ensure effective participation in election observation. Alternatively, the state may consider adopting the system used in Mozambique, where neutral observers are hired by the state, and post observers in each of the 33,000 polling stations instead of the parties and the candidate agents.
- o Regulations should be put forth for political parties to disclose any external financiers.
- o Use the opportunity of the amendments to the Political Parties Act 2011 to propose tenure of office for the RPP. In addition, the ORPP should be supported to ensure that the RPP devolves his/her office.
- o Strengthen the PPLC, the PPTC and the ORPP to address internal political parties' disputes.
- o The ORPP must exercise impartiality in the enforcement of the requirements for the registration and deregistration of political parties equally and fairly.
- o The laws relating to political parties must be enforced rigorously both through internal party mechanisms and external institutions i.e. the PPLC, PPDT and the ORPP.
- o To address the issue of external party funding, there must be a system of funding parties by the state through an equitable mechanism. Section 25(2) (a) of the Political Parties Act 2011 should be amended to provide for equal funding. Proposals on funding to be included in the Amendment Bill touching on section 25.

## SESSION 8: YOUTH PARTICIPATION IN ELECTIONS

**Presented by Ms. Susan Kariuki Mwangera, Executive Director, Youth Agenda**

In this Presentation, Ms. Susan Mwangera examined the role that the youth played in the 2013 general elections. The presentation noted, with the help of statistical data, that despite constitutional requirements for increased participation by the youth, this was yet to be realised to its fullest extent. She identified challenges including the disenfranchisement of the youth who lacked identity cards and inadequate mechanisms within the vast majority of political parties to promote the participation of youth in the electoral process.

Ms. Mwangera called upon the participants to carry out an assessment of: youth representation in party primaries, independent candidates and aspirants; the level of youth participation in electoral process; the application of affirmative action; voting trends and vices; voter registration; and the implementation of electoral related laws.

The population of Kenya's youth grows annually by an estimate of about 400,000. Between 2007 and 2013, the number of voters that fell in the youth bracket rose by about 859,658. It is a paradox therefore, that while the population had gained an approximate two million youth within the five year period there was a decline in the number of youth within the 18-25 years of age bracket that were registered as voters. In 2007, 2,435,689 youth were registered but in 2013 only 2,419,730 were registered. This is a decrease of 15,959. Therefore, approximately 1.2 million were not registered as voters.

The Youth Agenda conducted a research in the year 2013 which showed that only 81% of the interviewed youth said they had registered to vote ahead of the 2013 general election. The key reason cited by 56% of those that had not registered was the lack of national identity cards which is a requirement for registration. The problem manifested itself more in the rural areas where 78% claimed not to have IDs as compared to 46% in the urban areas. Going by regions, Central had the least mentions of this challenge at 19% while Nyanza had the highest at 70%.

On the matter of youth participation in the political party nomination process, it was observed that a number of parties were reluctant to develop independent nomination rules based on the Political Parties Act 2011 and the constitutional principles. Several parties copied each other's nomination rules particularly UDM, Safina, Saba Saba Asili, PICK, Agano and New Ford Kenya. The outcome was party nomination processes characterised by logistical capacity gaps, violence, and unclear nomination procedures, which demotivated the youth from participating. Therefore, young people generally opted for smaller parties, which were

less expensive and less competitive. On the positive side, young people enjoyed reduced nomination fees even in the mainstream political parties.

In the same survey, only about 59% of respondents overall considered their party's nomination process to have been conducted in a free, fair and democratic manner. On the other hand 7 out of 10 women who participated in the survey considered the processes unfair. Therefore, it is clear that a majority of young women did not feel that they were treated fairly in the process.

In 2013, the IEBC cleared an estimated 12,777 candidates of whom about 3,780 were youth within the 18 - 35 years bracket. This represented about 30% of all the cleared candidates. Nonetheless the 2013 general elections went ahead to record the highest ever youth representation and particularly in the higher positions. At the County Assembly level, approximately 25% of the leaders are below 35 years.

Unfortunately though, the youth were heavily engaged in electoral malpractices. The same study showed that 46% of rural youth and 41% of urban youth sold their ID Cards.

Based upon the foregoing studies it is recommended that the following steps be taken to improve the participation of the youth in the electoral process:

- o There is a need to clearly distinguish between a youth and a young person.
- o Enact the legislation required under Article 100 (c) to promote the representation in parliament of Youth by August 27, 2015. This must be supported by a sound policy framework.
- o Operationalise Article 55 of the CoK 2010 and put in place an affirmative action policy and legislation for all to enjoy their social, economic and political rights.
- o The IEBC should disaggregate election data based on age so as to understand the elective practices of the various age cohorts.
- o Political parties need to be more vigilant in enforcing the affirmative action within affirmative action in their party processes (Zebra Rule).

The ORPP must impose sanctions on political parties that do not adhere to the Political Parties Act 2011.

- o More gender awareness needs to be created in the public. Also the financial consequences for failure to obtain "two-thirds" gender principle during elections e.g. the high number of MCAs nominated from the party lists.

- o All stakeholders to play a role in the implementation of the Constitution. Civil society Organisations were requested to originate a Bill to implement Articles 100 and 55 of the CoK 2010.
- o There is no mechanism through which the ORPP captures youth participation during political parties' registration processes. The ORPP should put in place a mechanism to capture youth membership.
- o There is need to put in place proper regulations for sanctions against political parties that do not comply with the requirement for youth and women nominations to achieve political representation for these groups.
- o Uncollected IDs cards require a personal initiative of the applicants for collection. These can be accessed at the point at which the application was made. When an ID card has stayed for too long they are forwarded to the Chief to assist with searching for the individual.
- o CSOs should partner with the NRB in developing adequate voter registration strategies.
- o The system of registration contributes to disenfranchisement because the process of registration is bureaucratic and requirements particularly that of having the ID cards of the parents as a prerequisite for registration is unreasonable.
- o The registration of nationals and refugees is conducted separately and recorded under one system. Any application by a foreigner previously registered as a refugee for registration as a citizen is immediately flagged out by the APHS system. The Integrated Population Registration System needs to be enhanced. The system of registration contributes to disenfranchisement because the process of registration is bureaucratic and requirements particularly that of having the ID cards of the parents for as a prerequisite for registration is unreasonable.

## GENERAL RECOMMENDATIONS AND CONCLUSION

The forum participants also made observations on general issues that affect, arise from or have a bearing on the electoral process. These issues were identified as:

- o The demarcation of boundaries is a cause for insecurity and social issues. County boundaries need to be clearly demarcated.
- o There is a need to have a clear roadmap to the elections which provides an opportunity for building synergies amongst the various stakeholders.
- o The CoK 2010 provides that the date of the next election is to be on the 2<sup>nd</sup> Tuesday of August of every 5<sup>th</sup> successive year. The date causes certain problems especially if a presidential runoff is required since the term of the IEBC will come to an end before the runoff. Similarly early elections will coincide with the retirement of some Supreme Court Judges who will be required to hear a presidential petition if any and at a time when Parliament will have been dissolved and therefore cannot select a replacement. The Supreme Court will not be properly constituted which has legal implications.
- o An amendment of the Constitution is required. In determining the date for the next election both the foreseeable consequences in terms of the composition of both the IEBC and the Supreme Court, which are both key institutions in the elections.
- o Addressing the loopholes in the constitutional and legal framework require substantive amendments. There must be genuine motivation for the Constitution to be amended.
- o All actors must have strategies for preparing for elections. The IEBC; civil society; political parties and the public must be prepared for the elections in terms of strategy, resources, policies, laws and execution.
- o The IEBC should mainstream disability into all its programming. Disability issues should be embedded integrally into programming such as voter registration, voter education and polling.
- o All actors must encourage the youth to collect Identity Cards for purpose of registration. Information on where to collect identity cards must be disseminated to the public.

# APPENDICES

## Appendix 1: Concept Note



### POST 2013 LEARNING PLATFORM ON ELECTIONS AND THE ELECTORAL PROCESSES 25<sup>TH</sup> TO 28<sup>TH</sup> NOVEMBER 2014, GREAT RIFT VALLEY LODGE, NAIVASHA


#### CONCEPT

##### BACKGROUND

The Institute for Education in Democracy (IED) is a Non-Governmental organization providing non-partisan leadership in the democratization and governance processes in Kenya since 1993. IED is an accredited elections observer institution and has participated in elections monitoring and observation in Kenya and abroad for the last 20 years. Pertinent issues/findings and recommendations have been documented post 2013 general elections including by-elections that have been conducted thereafter. IED recognizes that a number of key civil society organizations have worked tremendously in the process and whose technical expertise has been dedicated towards credible, free, fair and peaceful elections in Kenya. To this end, IED proposes to work with the Kenya Human Rights Commission (KHRC) and the Kenyan Section of the International Commission of Jurists (ICJ- K) in organizing a learning platform on Elections and the electoral cycle.

The Kenya Human Rights Commission (KHRC) is a Non-Governmental Organization (NGO) which was founded in 1991 and registered in Kenya in 1994 with a mandate to entrench human rights and democratic values in the society. Concordantly, KHRC has, since its inception, engaged in advocacy and research on electoral governance. KHRC has constantly monitored and advocated for the protection and respect of human rights standards during elections within Kenya as well as other jurisdictions. With regards to election observation, KHRC employs a long term election observation approach to effectively interrogate the entire electoral cycle as well as engage with both non-state and stakeholders in Kenya and the region on key emerging electoral governance issues.

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) was established in 1959, as an autonomous national section of the International Commission of Jurists, based



in Geneva, Switzerland. ICJ Kenya is a not for profit, non-partisan, membership organization. Our more than 300 members include lawyers and judges who use their membership to promote the ideals which ICJ Kenya stands for. The Organizations' mission is to protect human rights, promote the rule of law and democracy in Kenya and across Africa through the application of legal expertise and international best practices. ICJ Kenya endeavors through its democratization and access to Justice programmes to realize electoral democracy and justice in Kenya through advocacy, research and litigation. In addition, ICJ Kenya is an accredited long term observer in Kenya.

The aforementioned conveners of the meeting are part of a Technical Working Group (TWG) on elections and electoral process in Kenya. The working group currently operates as a loose network of civil society organizations working on democracy and electoral issues. The composition of the working group is as follows: The Institute for Education in Democracy (IED); Kenya Human Rights Commission (KHRC); Electoral Institute for Sustainable Democracy in Africa (EISA); National Democratic Institute (NDI); Election Observation Group (ELOG); Kenyan Section of the International Commission of Jurists (ICJ-Kenya); Kituo Cha Sheria; Uraia Trust; Youth Agenda (YAA); National Council of Churches of Kenya (NCCK); Constitution Reform and Education Consortium (CRECO); United Disabled Persons of Kenya (UDPK); and Centre for Multiparty Democracy (CMD).

The TWG works towards the provision of technical support in Elections Administration and Management and Elections related matters in the sector; consolidation of elections monitoring and observation findings and recommendations post the 2013 general elections of member organizations; championship for timely administrative and legal electoral reforms geared towards enhancing democratic space in Kenya; harmonization of institutional skills and resources in current/ongoing interventions; and addressing the public on pertinent electoral issues as and when required through institutional leadership.

## **CURRENT MILESTONES**

The TWG has convened thrice with the objective of discussing and consolidating elections observation issues/findings and recommendations post 2013 general elections and the by-elections that proceeded thereafter. We are equally aware that IEBC has recently conducted its own post 2013 general elections evaluation to which majority of the civil society organizations working in the electoral process have participated. KHRC convened one of the TWGs whereas IED convened two TWGs. EISA has accordingly consolidated the electoral legal reforms engendered in the process in which majority of TWG members participated. It is paramount to note that the thirteen CSOs involved in the TWG have valued the spirit of working together towards a common goal of presenting findings and recommendations to institutions working in the electoral processes.

## **NECESSARY INTERVENTION**

TWG has resolved that for a fully encompassing effective electoral cycle that guarantees free, fair and peaceful elections all key stakeholders must be involved from the beginning. While it is the mandate of IEBC to conduct and supervise elections, key stakeholders namely: the Judiciary ( the High Court and Supreme Court Leadership), Judiciary Working Committee on Elections Preparations, Justice and Legal Affairs Committee, Political parties, Constitutional offices ( IEBC, CIC, NCIC etc.), and the Office of the Registrar of Political Parties, Security agencies, and National Registration Bureau.

## **SPECIFIC OBJECTIVES**

Specifically, the forum is designed to achieve the following objectives:

- To share post 2013 by-election observation findings and recommendations to institutions engaged in elections.
- To discuss, enrich and commence preparations on adoption of recommendations on improving the management and administration of upcoming elections.
- To develop a road map of required administrative and legal reforms within the current electoral cycle.

## **LEARNING PLATFORM DESIGN AND METHODOLOGY**

The learning platform will attract 45 participants from civil society organizations working on elections, Government institutions namely the Independent Electoral and Boundaries Commission and Boundaries Commission (IEBC), relevant Parliamentary Committees, Constitutional Independent Commissions, Political Parties Dispute Tribunal, Office of the Registrar of Political Parties, National Registration Bureau, Office of Director of Public Prosecutions, the Judiciary, Political Parties among others.

The forum will be a two day residential meeting that will incorporate an agenda that will allow TWG presentations and plenary discussions. Discussions and presentations will target various TWG thematic areas such as Elections administration and management, Elections and Human Rights, Elections and legal Framework, Elections and Civic engagement, Elections and Special interest groups, Elections and Media, and Elections and security. The discussions will encourage a dialogue between civil society organizations and pertinent State actors related to elections matters.

## **EXPECTED OUTCOME**

It is envisaged that from the forum a comprehensive report detailing the way forward and recommendations will be developed and shared with various stakeholders for future engagement.

## Appendix 2: The Learning Platform Programme

POST 2013 LEARNING FORUM ON ELECTIONS AND ELECTORAL PROCESSES IN KENYA  
25<sup>th</sup> – 28<sup>th</sup> NOVEMBER, 2014 GREAT RIFT VALLEY LODGE, NAIVASHA PROGRAMME

DAY ONE: 25th November, 2014 (ARRIVAL OF PARTICIPANTS)	
DAY TWO: 26 <sup>th</sup> NOVEMBER, 2014	
TIME	ACTIVITY
<b>Session 1: Opening remarks and context setting</b>	
<b>Moderator:</b>	
7:30 – 8:00 am	<b>Registration</b> IED
8:00 – 8:30 am	<b>Welcoming Remarks/ Context Setting</b> <i>Ms. Joyce Majiwa, Chairperson, Institute for Education in Democracy (IED)</i>
8:30 – 9:00 am	<b>Key Note Address</b> <i>Lilian Mahiri-Zaja, Vice Chairperson, Independent Electoral and Boundaries Commission (IEBC)</i>
<b>Session 2: Elections Administration and Management</b>	
<b>Moderator:</b>	
9:00 – 9:30 am	Elections Administration and Management in Kenya <i>Ms. Elizabeth Kirema, Programme Head, Research, Documentation and Dissemination, IED</i>
9:30 – 10:00 am	Plenary/ Recommendations
10:00 – 10:30 am	Tea Break
<b>Session 3: Elections and the Legal Framework</b>	
<b>Moderator:</b>	
10:30 – 11.15 am	Overview of the gaps in the Elections legislation in Kenya/ The Role of the Courts in Electoral Processes <i>Mr. Martin Oloo, Constitutional Lawyer</i>
11:15 - 11.45 pm	Plenary/ Recommendations
<b>Session 4: Elections and Use of Information Communication Technology</b>	
11.45 - 12.30 pm	Voter Registration and ICT <i>Mr. Mike Yard, Chief of Party, IFES</i>
12.30- 1:00 pm	Plenary/Recommendations
1:00-2.00 pm	<b>Lunch</b>

<b>Session 5: Elections and Women Participation</b>	
<b>Moderator:</b>	
2:00 – 2:30 pm	Re-looking at the implementation of affirmative action's/ documented strategies on women participation <i>Ms. Grace Maingi, Executive Director, Uraia Trust</i>
2:30 – 3.00 pm	Plenary/Recommendations
<b>Session 6: Elections and Voter Education</b>	
<b>Moderator:</b>	
3.00 – 3:30 pm	Strategies for Voter Education by IEBC <i>Ms. Ann Nderitu, Ag. Voter Education and Partnerships Director, IEBC</i>
3:30 – 4.00 pm	Plenary /Recommendations
<b>4:00 – 4:15 pm</b>	<b>Tea Break</b>
<b>DAY THREE: 27<sup>th</sup> NOVEMBER, 2014</b>	
<b>TIME</b>	<b>ACTIVITY</b>
<b>Session 1: Recap of the First Day</b>	
<b>Moderator:</b>	
8.00-8.30 am	Recap of the Previous day discussions <i>Moderator</i>
<b>Session 2: Human Rights Aspects in Elections</b>	
<b>Moderator:</b>	
8:30 – 9.00 am	Human Rights Aspects in Elections/Special Interest groups rights <i>Ms. Carol Werunga, Programme Advisor, Electoral Governance, Kenya Human Rights Commission(KHRC)</i>
9:00- 10.00 am	Plenary/Recommendations
<b>10:00 – 10.30 am</b>	<b>Tea Break</b>
<b>Session 3: Elections and Political Parties</b>	
<b>Moderator:</b>	
10.30: – 11:15 am	Political Parties Role in Elections <i>Ms. Lucy Ndung'u, Registrar of Political Parties, Kenya</i>
11.15-12.00 pm	Plenary/Recommendations

<b>Session 4: Elections and Youth Participation</b>	
<b>Moderator:</b>	
12:00 – 12:30 pm	Youth Participation in Elections <i>Ms. Susan Kariuki, Executive Director, Youth Agenda</i>
12.45- 1.15pm	Plenary/Recommendations
<b>1.15- 2.00 pm</b>	<b>Lunch</b>
<b>Session 5: Elections and Media</b>	
<b>Moderator:</b>	
2.00- 2.30pm	Role of the Media in Elections <i>Mr. Linus Kaikai, Chairperson Editors Guild</i>
2.30-3.00pm	Plenary/Recommendations
<b>Session 6: Elections and Security</b>	
3.00- 3.30 pm	Road map towards 2017 Elections
3.30 – 4.00 pm	Closing Remarks  IED/KHRC/ICJ
4.15 onwards	<b>Tea Break</b>

## Appendix 3: List of Participants

	PARTICIPANT	INSTITUTION	DESIGNATION
1	Hon. Justice Luka Kimaru	Judiciary	High Court Judge
2	Lilian Mahiri-Zaja	IEBC	Vice Chairperson
3	Joyce Majiwa	IED	Chairperson
4	Mohammed Alawi	IEBC	Commissioner
5	Lucy Ndungu	ORPP	Registrar
6	Tryphaena Estambale	PPDT	CEO/Secretary
7	Herbert Mwachiro	IED	Deputy Chairperson
8	Grace Maingi	Uraia Trust	Executive Director
9	Brian Weke	IED	Executive Director
10	Taabu Daniel	NARC Kenya	Executive Director
11	Stephen Namusule	FORD Kenya	Executive Director
12	Susan Kariuki	Youth Agenda	Executive Director
13	Kizito Mugali	UDF	Executive Director
14	Joshua Changwony	CRECO	Deputy Executive Secretary/Programmes Coordinator
15	Onyango Oloo	TNA	Secretary General
16	Carla Chianese	IED / Moderator	Programme Head, Civic Engagement and Flames of Democracy Programme
17	Tom Kagwe	Moderator	-
18	Rebecca Wangui	IED	Programme Officer, Electoral Process
19	Elizabeth Kirema	IED	Programme Head, Research, Documentation and Dissemination Programme
20	Yusuf Omete	IED	Programme Assistant, Electoral Processes and Institutions of Democracy Programme
21	Carol Werunga	KHRC	Programme Advisor, Electoral Governance
22	Irene Muchomba	KHRC	-
23	Mulle Musau	ELOG	National Coordinator
24	Brenda Dora	Kituo Cha Sheria	Legal Officer
25	Kevin Ogema	Kituo Cha Sheria	Research, Documentation and Monitoring Officer
26	Jolly Kathambi	ICJ	Programme Assistant, Electoral Governance

27	Abubakar Said	Uraia	Civic Education Manager
28	Judy Nyaga	UDPK	Executive Director
29	Lucy Odera	NPSC	Legal Officer
30	Cheryl Akinyi	EISA	Senior Program Assistant
31	David Koech	URP	Executive Director
32	Frank Mukwanja	TNA	Programmes/Communications Acting Director
33	Decimah Isalano	IEBC	Director, Research and Development
34	Moses Bakari	CRECO	Senior Programme Officer
35	Alice Njau	NDI	Program Manager - Elections
36	Derrick Kaisha	Rapporteur	-
37	Christabell Kaiwa	KLRC	Legal Assistant
38	Anne Nderitu	IEBC	Ag. Director, Voter Education and Partnerships
39	Lawrence Barasa	IEBC	Coordinator, Voter Education
40	Eustace Kinyua	ELOG	Programme Officer
41	Juliet Murimi	ORPP	Legal Officer
42	Charles Warria	DAP	Capacity Development Manager
43	Michael Yard	IFES	Chief of Party, Kenya and Election Technology Expert
44	Beatrice Dindi	NRB	Senior Assistant Director

## Appendix 4: Pictorial



*Ms. Elizabeth Kirema, Programme Head – Research, Documentation and Dissemination – IED, presenting on Elections Administration and Management in Kenya*



*Mr. Mike Yard, Chief of Party at IFES presenting on Elections and ICT*



*Ms. Anne Nderitu, Ag. Voter Education and Partnerships Director at the IEBC making her presentation on Elections and Voter Education*



*Ms. Carol Werunga, Governance Advisor at KHRC, making her presentation on Elections and Human Rights*



*Ms. Susan Kariuki Mwongera, Executive Director -Youth Agenda making a presentation on Youth and Elections*



*Mr. Martin Oloo presenting on the role of the courts in electoral processes*



*Ms. Grace Maingi of Uraia Trust making her presentation on the implementation of affirmative action in Kenya*



*Commissioner Mohamed Alawi Hussun, IEBC*



*Mr. Mulle Musau, Coordinator, ELOG*



*Ms. Lilian Mahiri-Zaja, Vice Chairperson, IEBC*



*Ms. Beatrice Dindi, Senior Assistant Director, NRB*



*Ms. Cheryl Akinyi, Senior Program Assistant, EISA*



*Hon. Justice Luka Kimaru, High Court Judge, Judiciary*



*David Koech, Executive Director, URP*



*Frank Mukwanja, Programmes/Communications Acting Director, TNA*



*Ms. Carla Chianese, Programme Head, Civic Engagement & Flames of Democracy, IED*



*Mr. Moses Bakari, Senior Programme Officer, CRECO*



*Mr. Eustace Kinyua, Programme Officer, ELOG*



*Ms. Judy Nyaga, Executive Director, UDPK*



*Mr. Kevin Ogema, Research, Documentation and Monitoring Officer, Kituo cha Sheria*



*Ms. Brenda Dora, Legal Officer, Kituo cha Sheria*



*Mr. Kizito Mugali, Executive Director, UDF*



*Ms. Alice Njau, Program Manager – Elections, NDI*



*The Learning Forum participants group photo*

